

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 201. PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

1 TAC §201.2

The Department of Information Resources (department) proposes an amendment to 1 TAC §201.2, *Procedures for Complaints, Vendor Protests and the Negotiation and Mediation of Certain Contract Disputes and Bid Submission, Opening and Tabulation Procedures*.

The amendment is proposed to comply with Texas Government Code §2156.005(d), which requires state agencies that make purchases to adopt the Texas Building and Procurement Commission rules on bid openings and tabulation.

Larry Zeplin, Director of Administrative Services for the department, has determined that for each year of the first five years the amended rule will be in effect, there will be no fiscal implications for state government as a result of enforcing or administering the proposed amendment. There will be no foreseeable fiscal implications for local government as a result of enforcing or administering the proposed amendment.

Mr. Zeplin has determined that for each year of the first five years the amended rule will be in effect, the public will benefit by the prudent management of vehicle assets.

Mr. Zeplin believes there will be no different effect on small businesses than there is on large businesses and that there is no additional anticipated economic cost to persons required to comply with portions of the amended rule.

Comments on the proposed amendment may be submitted to Cynthia J. Hill, Attorney, Department of Information Resources, via mail to P.O. Box 13564, Austin, Texas 78711, or electronically to cynthia.hill@dir.state.tx.us no later than 5:00 p.m. CST, within 30 days after publication.

The amendment is proposed under §2156.005(d), Government Code, which requires the department to adopt the Texas Building and Procurement Commission rules relating to bid opening and tabulation.

Texas Government Code §2054.052(a) and §2156.005(d) are affected by the amended rule.

§201.2. Procedures for Complaints, Vendor Protests and the Negotiation and Mediation of Certain Contract Disputes and Bid Submission, Opening and Tabulation Procedures.

(a) - (c) (No change.)

(d) The department adopts by reference the rule of the Texas Building and Procurement Commission relating to Bid Submission, Opening and Tabulation, as such rule may be amended from time to time. The Commission rule is codified in Title 1, Part 5, Texas Administrative Code, Chapter 113 and is located at the Office of the Secretary of State's website: www.sos.state.tx.us/tac/index.html.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 1, 2003.

TRD-200302710

Renee Mauzy

General Counsel

Department of Information Resources

Earliest possible date of adoption: June 15, 2003

For further information, please call: (512) 475-2153

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION DIVISION

SUBCHAPTER G. GO TEXAN PARTNER PROGRAM RULES

4 TAC §§17.302 - 17.304, 17.306, 17.308

The Texas Department of Agriculture proposes amendments to §§17.302-17.304, §17.306 and 17.308, all concerning the administration of the department's GO TEXAN Partner Program (GOTEPP), a matching grant program. The amendments are proposed to clarify and update the sections, to establish a requirement that retailers or distributors applying to GOTEPP document a direct benefit to GO TEXAN members, to establish maximum grant award amounts and to establish a maximum number of projects that may be funded per biennium.

Delane Caesar, assistant commissioner for marketing and promotion, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implication

for the state or local government as a result of enforcing or administering the sections as amended.

Ms. Caesar also has determined that for each year of the first five years the amendment are in effect, the public benefit anticipated as a result of enforcing the amendment will be clearer and more efficient requirements and procedures for the administration of the GOTEPP matching grant program. In addition, by requiring documentation of a direct benefit to GO TEXAN program members the amendments make it clearer that the program benefits those that were intended to benefit from the program, Texas agricultural producers. There is no anticipated impact on individuals, small businesses and micro-businesses to comply with the amendments as proposed.

Comments on the proposal may be submitted to Delane Caesar, Assistant Commissioner for Marketing and Promotion, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The proposed amendment to §17.302 adds a representative of agricultural producers to the GOTEPP advisory board, provides that the board shall meet at least biannually and provides that a majority of the total board membership shall constitute a quorum. The proposed amendment to §17.303 provides additional eligibility requirements for retailers and distributors applying to the program, in order for the applicant to document a proposed project's direct benefit to GO TEXAN members. The proposed amendment to §17.304 adds a requirement to disclose names of owners having 10% or more ownership interest in an applicant business entity. The proposed amendment to §17.306 updates the address of the department's Marketing and Promotion Division, clarifies that at least a majority of a quorum of the board must approve or deny each project request, and adds new subsection (h) establishing maximum grant awards and a maximum number of projects that may be funded per biennium. The proposed amendment to §17.308 establishes a minimum amount of \$10 that will be returned to a successful applicant as a refund.

The amendments are proposed under the Texas Agriculture Code, §46.012, which authorizes the department to adopt rules to administer the GO TEXAN Partner Program.

The code affected by the proposal is the Texas Agriculture Code, Chapter 46.

§17.302. Administration.

(a) (No change.)

(b) The board's responsibilities under this subchapter are as follows.

(1) The board shall be composed of the following members appointed by the commissioner:

(A) - (H) (No change.)

(I) one representative from the Internet website or electronic commerce industry; ~~and~~

(J) one representative with demonstrated expertise in economic analysis ~~and~~ [-]

(K) one representative of agricultural producers.

(2) The board shall meet no less often than bi-annually ~~quarterly~~;

(3) A majority ~~[Two-thirds]~~ of the total board membership shall constitute a quorum;

(4) - (6) (No change.)

§17.303. Eligibility.

(a) An eligible applicant must be:

(1) - (5) (No change.)

(6) any other entity or business, other than a business meeting the definition of small business, that promotes the marketing and sale of Texas agricultural products. If a retailer or distributor, the applicant must demonstrate a direct benefit to GO TEXAN members in the manner provided in subsection (b) of this section. For purposes of this section, the department shall have the sole discretion to determine whether an entity meets program eligibility requirements.

(b) A retailer or distributor who applies under the program, must meet the requirements of paragraph (b)(1) or paragraph (b)(2) of this section, in order to document a direct benefit to GO TEXAN members:

(1) Applying with GO TEXAN members.

(A) The retailer/distributor must apply jointly with GO TEXAN members, other than associate or other retail members, in order to submit a GOTEPP project proposal.

(B) All participating applicants must be GO TEXAN members.

(i) GOTEPP project proposals with a total project amount from \$0.00 to \$5,000.00 require a minimum of one applicant in addition to the applicant retailer or distributor.

(ii) GOTEPP project proposals with a total project amount from \$5,001.00 to \$30,000.00 require a minimum of three applicants in addition to the applicant retailer or distributor.

(iii) GOTEPP project proposals with a total project amount from \$30,001.00 to \$99,999.00 require a minimum of seven applicants in addition to the applicant retailer or distributor.

(iv) GOTEPP project proposals with a total project amount over \$100,000.00 require a minimum of 10 or more applicants, in addition to the applicant retailer or distributor.

(C) All participating applicants and applicant retailers/distributors must submit all required GOTEPP documentation.

(D) A retailer/distributor is permitted to utilize the same additional applicants no more than twice in a biennium; or

(2) Demonstration of GO TEXAN members/vendors. Retailer/distributors can apply without applying with other GO TEXAN members if 70% of their members and/or vendors are GO TEXAN members, other than associate or retail members.

(c) All applicants will be required to provide documentation verifying the stated information, in addition, they will be required to report sales information.

§17.304. Requirements for Participation.

To be eligible for participation in the program through the use of matching funds under this subchapter, an applicant must:

(1) - (3) (No change.)

(4) submit a notarized affidavit on a form provided by the department certifying and disclosing the following:

(A) - (C) (No change.)

(D) disclosing names of owners having 10% or more ownership interest in a business entity;

(E) ~~[(D)]~~ that applicant meets all program requirements to apply for matching funds; and

(5) (No change.)

§17.306. Filing Requirements and Consideration of Project Requests.

(a) Project request. An applicant must submit a project request, completed in accordance with this subchapter, to the department's Marketing and Promotion Division, 1700 N. Congress Ave., 11th ~~[10th]~~ Floor, Austin, Texas 78711.

(b) - (d) (No change.)

(e) Board review of eligible applicants. The board shall approve or deny each project request by at least a majority of the quorum of the board.

(f) - (g) (No change.)

(h) Maximum grant awards; number of projects.

(1) A maximum grant award of \$75,000 per project may be approved by the board, for a maximum total project amount of \$150,000.

(2) A maximum grant award of \$75,000 (total project amount of \$150,000) per applicant, per biennium, may be approved by the board.

(3) No more than two projects per biennium may be approved for any one applicant.

§17.308. Use of Funds.

(a) - (f) (No change.)

(g) Upon the completion or cancellation of a project, the department will refund to the successful applicant the applicant's share of any unexpended funds approved and contracted for the project, minus the 20% portion of funds allocated to the department's GO TEXAN program. A refund will be made after quantification information required by the project contract has been submitted to the department. The minimum amount of a refund that will be returned to the applicant by the department is \$10.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 5, 2003.

TRD-200302771

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: June 15, 2003

For further information, please call: (512) 463-4075



TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 45. MARKETING PRACTICES

SUBCHAPTER D. ADVERTISING AND PROMOTION--ALL BEVERAGES

16 TAC §45.105

The Texas Alcoholic Beverage Commission proposes amendments to §45.105, relating to outdoor advertising by holders of Mixed Beverage permits. Restrictions on outdoor advertising by alcoholic beverage licensees and permittees are imposed by §108.52 of the Alcoholic Beverage Code. Pursuant to §108.07 of the code, those restrictions do not apply to Mixed Beverage permittees, however. The proposed amendment would operate to impose the outdoor advertising restrictions applicable to retail sellers of beer to Mixed Beverage permittees.

Lou Bright, General Counsel, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact on units of state or local government as a result of enforcing the proposed amendment. The proposed amendment would govern the placement and content of signs used by Mixed Beverage permittees, some of whom are small businesses. The proposed amendment may, therefore, cause some fiscal impact to some small businesses. The amount of that impact is not amenable to calculation as it will vary widely from one establishment to another.

Mr. Bright has determined that the proposed amendment will benefit the public by furthering the purposes underlying §108.52 of the Alcoholic Beverage Code and by imposing uniform conditions on similarly situated businesses.

Comments should be addressed to Lou Bright, General Counsel, P.O. Box 13127, Austin, Texas 78711.

This amendment is proposed under the authority of §5.31 of the Alcoholic Beverage Code, which authorizes the commission to prescribe and publish rules necessary to carry out the provisions of the code. The amendment is also proposed under the authority of §108.07 of the Alcoholic Beverage Code, which authorizes the commission to adopt rules regulating outdoor advertising by Mixed Beverage permittees.

Cross Reference: Alcoholic Beverage Code §108.07 is affected by this amendment.

§45.105. ~~Outdoor~~ Advertising by Mixed Beverage Establishments.

(a) This rule relates to §108.07 and §108.52 of the Alcoholic Beverage Code.

(b) The holder of any permit allowing the sale of mixed beverages shall conform to the same outdoor advertising standards imposed by §108.52 of the Alcoholic Beverage Code pertaining to all other retail licenses or permits.

(c) The permissible advertising in or on the premises of any location that holds a mixed beverage permit shall be the same as the permissible advertising in or on the premises of any location holding a license or permit to sell beer.

(d) In addition to the restrictions imposed by subsections (a) and (b) of this section, the ~~[The]~~ holder of any permit allowing the sale or service of mixed beverages may not advertise any prices which may be seen from the street on any sign, billboard, marquee, or any other display on or outside of the building or which may be seen from outside of the building.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 30, 2003.

TRD-200302707

Jeannene Fox
Assistant Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: June 15, 2003
For further information, please call: (512) 206-3204

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC COMMUNITY/JUNIOR COLLEGE DISTRICTS AND TECHNICAL COLLEGES SUBCHAPTER J. ACADEMIC ASSOCIATE DEGREE PROGRAMS

19 TAC §§9.181 - 9.186

The Texas Higher Education Coordinating Board proposes new §§9.181 - 9.186, concerning academic associate degrees. Specifically, these new sections will establish guidelines for Associate of Arts and Associate of Science degree programs offered by public community/junior colleges and state colleges authorized to offer transfer programs.

Dr. Glenda O. Barron, Assistant Commissioner for Community and Technical Colleges, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections provide clear instructions to institutions about requirements for academic associate degree programs to harmonize with law and rules on the core curriculum, field of study curricula, and transfer of credit. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new rules may be submitted to Dr. Glenda Barron, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or by e-mail to Glenda.Barron@thehb.state.tx.us.

The new sections are proposed under the Texas Education Code, §§61.003, 61.051(e) - (f), 61.0513, 61.053, 61.054, 61.055, 61.061, 61.062(c) - (d), 61.075, 130.001(b)(3) - (4), 130.003(e)(1)(2)(3) and (7) and 135.04, which authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for the coordination of postsecondary certificate and associate degree programs eligible for state appropriations.

The new sections do not affect Texas Education Code §§130.001(b)(3) - (4), 130.003(e)(1)(2)(3) and (7) and 135.04.

§9.181. Purpose.

This subchapter provides rules for the structure of academic associate degree programs in public community/junior colleges eligible for state appropriations.

§9.182. Authority.

The Texas Education Code, §§61.003, 61.051(e) - (f), 61.0513, 61.053, 61.054, 61.055, 61.061, 61.062(c) - (d), 61.075, 130.001(b)(3) - (4), 130.003(e)(1)(2)(3) and (7) and 135.04, authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for the coordination of postsecondary certificate and associate degree programs eligible for state appropriations.

§9.183. Degree Titles, Program Length, and Program Content.

(a) An academic associate degree may be called either an associate of arts (AA) or an associate of science (AS) degree.

(1) The associate of arts (AA) is the default title for an academic associate degree program if the college offers only one type of academic degree program.

(2) If a college offers both associate of arts (AA) and associate of science (AS) degrees, the degree programs may be differentiated in one of two ways, including:

(A) The AA program may have additional requirements in the liberal arts and/or the AS program may have additional requirements in disciplines such as science, mathematics, or computer science; or

(B) The AA program may serve as a foundation for the BA degree and the AS program for the BS degree.

(b) Academic associate degree programs must consist of a minimum of 60 SCH and a maximum of 66 SCH.

(c) Except as provided in paragraph (1) of this subsection, academic associate degree programs must incorporate the institution's approved core curriculum as prescribed by §4.28 of this title (relating to Core Curriculum) and §4.29 of this title (relating to Core Curricula Larger than 42 Semester Credit Hours).

(1) A college may offer a specialized academic associate degree that incorporates a Board-approved field of study curriculum as prescribed by §4.32 of this title (relating to Field of Study Curricula) and a portion of the college's approved core curriculum if the coursework for both would total more than 66 SCH.

(2) A college that has a signed articulation agreement with a General Academic Teaching Institution to transfer a specified curriculum may offer a specialized associate degree program that incorporates that curriculum.

§9.184. Approval.

Community colleges and state colleges authorized to offer transfer programs may offer academic associate degree programs that conform to these guidelines without requesting approval from the Board.

§9.185. Reporting to the Board.

Contact hours for courses in approved academic certificate and associate degree programs at public postsecondary institutions must be determined and reported in compliance with Board policy as outlined in the Lower-Division Academic Course Guide Manual and state law.

§9.186. Disapproval of Programs; Noncompliance.

No funds appropriated to any public postsecondary institution shall be expended for any academic associate degree program that is not in compliance with these rules. Existing academic degree programs must be brought into compliance by August 1, 2004.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 1, 2003.

TRD-200302715
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 18, 2003
For further information, please call: (512) 427-6162



CHAPTER 13. FINANCIAL PLANNING

SUBCHAPTER K. TECHNOLOGY WORKFORCE DEVELOPMENT GRANT PROGRAM

19 TAC §13.193

Texas Higher Education Coordinating Board proposes an amendment to §13.193, concerning proposal solicitation under the Technology Workforce Development Grant Program. Specifically, this amendment will allow the Coordinating Board more flexibility in requesting proposal submissions that address the second purpose of the Technology Workforce Development Act: to increase collaborative efforts between universities, engineer and computer science departments, and private companies.

Dr. Linda Domelsmith has determined that for each year of the first five years the amended section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the amendment.

Dr. Domelsmith has also determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the amendment will be increase collaborations among higher education institutions. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposed amendment may be submitted to Dr. Glenda Barron, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or by e-mail to Glenda.Barron@theccb.state.tx.us.

The amendment is proposed under the Texas Education Code, §51.837(a), which provides the Coordinating Board with the authority to award grants under Technology Workforce Development Grant Program on a competitive, peer-review basis and Texas Education Code, §61.051(p), which provides the Coordinating Board with the authority to administer trustee funds, grant programs, research competition awards, and other funds and program as directed by the legislature.

The amendment affects Texas Education Code, §51.837.

§13.193. *Proposal Solicitation*

(a) - (d) (No change.)

(e) Eligible institutions shall submit their proposals in the manner and format specified by the Coordinating Board with all requested information included. [Each eligible institution shall be permitted to submit one sole proposal and one joint proposal for each academic program for which proposals are being requested.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 1, 2003.

TRD-200302716
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 18, 2003
For further information, please call: (512) 427-6162



TITLE 22. EXAMINING BOARDS

PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 215. NURSE EDUCATION

22 TAC §§215.1 - 215.13

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Board of Nurse Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Board of Nurse Examiners for the State of Texas proposes the repeal of current 22 TAC §§215.1 - 215.13. These sections concern Nurse Education and are being repealed concomitant with the proposed adoption of new §§215.1 - 215.13. This proposed repeal is being done pursuant to the Board's rule review published in the April 5, 2002, issue of the *Texas Register* (27 TexReg 2845).

The Texas Government Code requires that each rule adopted by an agency after September 1, 1997 be reviewed within four years of the date it was adopted. The purpose of the review is to make a determination if the reason for adopting the rule continues to exist. The Board also received feedback from the education community that the current provisions of the rule were too burdensome. The current Chapter 215 has not been reviewed in its entirety since the repeal and adoption of a new chapter in December 1998. The chapter change became effective September 1999.

The Board's Advisory Committee on Education (ACE) began the process of discussing revisions to Chapter 215 in February 2002. The committee has now completed the review of the chapter. The committee and staff worked diligently to address the concerns expressed by the education community, specifically that sections of the chapter were too prescriptive. The committee and staff were resolved to create a workable solution that would address input from the nursing education programs. Consensus was reached in identifying an abbreviated process for meeting the intent of the proposed new chapter. This process would hold nursing programs accountable without compromising the purpose and function of the Board, which is to protect the citizens of Texas. The abbreviated process will reduce the work required by nursing programs when making major curriculum changes, as well as when expanding the program to other sites (DEI). Other changes to the chapter included the addition of clarifying comments throughout the chapter and deletion of areas that were no longer meaningful.

The proposed repeal of §§215.1 - 215.13 is made subject to §2001.039 of the Texas Government Code requiring rule review within four years of the date of a rule's repeal. This proposed

repeal is intended to comply with the requisite review of Chapter 215.

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposed repeal is adopted there will be no fiscal implications for state or local government as a result of the repeal.

Ms. Thomas, has determined that for each year of the first five years the proposed repeal is adopted, the public benefit will be that adoption of a new chapter will address concerns from the education community by decreasing the work now required, as well as ensuring continued accountability to the Board. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repealed sections.

Written comments on the proposal may be submitted to Katherine A. Thomas, MN, RN, Executive Director, Board of Nurse Examiners, P.O. Box 430, Austin, Texas 78767-0430.

The repeal is proposed pursuant to Texas Occupations Code §301.151 which authorizes the board to propose rules necessary for the performance of its duties and §301.157 which requires the Board to prescribe rules for its programs of study and accreditation.

No other statutes, articles, or codes will be affected by the proposed repeal.

§215.1. *General Requirements and Purpose of Standards.*

§215.2. *Definitions.*

§215.3. *Program Development, Expansion, and Closure.*

§215.4. *Accreditation.*

§215.5. *Mission and Goals (Philosophy and Outcomes).*

§215.6. *Administration and Organization.*

§215.7. *Faculty Qualifications and Faculty Organization.*

§215.8. *Students.*

§215.9. *Program of Study.*

§215.10. *Management of Clinical Learning Experiences and Resources.*

§215.11. *Facilities, Resources, and Services.*

§215.12. *Records and Reports.*

§215.13. *Total Program Evaluation.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302767

Katherine Thomas

Executive Director

Board of Nurse Examiners

Earliest possible date of adoption: June 15, 2003

For further information, please call: (512) 305-6823



22 TAC §§215.1 - 215.13

The Board of Nurse Examiners for the State of Texas proposes new 22 TAC §§215.1 - 215.13. These sections concern Nurse

Education and are being proposed concomitant with the repeal of the current §§215.1 - 215.13. This proposal is being done pursuant to the Board's rule review published in the April 5, 2002, issue of the *Texas Register* (27 TexReg 2845).

The Texas Government Code requires that each rule adopted by an agency after September 1, 1997 be reviewed within four years of the date it was adopted. The purpose of the review is to make a determination if the reason for adopting the rule continues to exist. The Board also received feedback from the education community that the current provisions of the chapter were too burdensome. The current Chapter 215 has not been reviewed in its entirety since the repeal and adoption of a new chapter in December 1998. The chapter change became effective September 1999.

The Board's Advisory Committee on Education (ACE) began the process of discussing revisions to Chapter 215 in February 2002. The committee has now completed the review of the chapter. The committee and staff worked diligently to address the concerns expressed by the education community, specifically that sections of the chapter were too prescriptive. Committee members also discussed how the current chapter impacted their programs. There were three areas of the chapter that received the most discussion. The first area was the section which requires programs to submit major curriculum changes to board staff for approval. The second area of most concern was the process required to initiate a distance education site. Board staff shared concerns regarding deletion of these two requirements and provided a compilation of data for ACE to consider before making revisions to the chapter. The committee and staff were resolved to create a workable solution that would address input from the nursing education programs. Consensus was reached in identifying an abbreviated process for meeting the intent of the chapter. This process would hold nursing programs accountable without compromising the purpose and function of the Board, which is to protect the citizens of Texas. The abbreviated process for fully accredited programs will reduce the work required by nursing programs when making major curriculum changes, as well as when expanding the program to other sites (DEI). Also, DEIs would no longer have individual pass rates, but will be included in the program's general pass rate. Finally, the board will issue a warning to a program when the pass rate of first-time candidates is less than 80% for two consecutive examination years (§215.4(c)(2)(C)) as opposed to the current chapter's time period of two of the last three examination years. Other changes to the chapter included the addition of clarifying comments throughout the chapter and deletion of areas that were no longer meaningful.

The proposed new §§215.1 - 215.13 is made subject to §2001.039 of the Texas Government Code requiring rule review within four years of the date of a rule's adoption. This proposal is intended to comply with the requisite review of Chapter 215.

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposed sections are adopted there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed sections.

Ms. Thomas, has determined that for each year of the first five years the proposed sections are adopted, the public benefit will be that adoption of the new chapter will address concerns from the education community by decreasing the work now required, as well as ensuring continued accountability to the Board. Additionally, these changes will not alter the purpose of the Board's mission to ensure public safety and will allow for collection and

comparison of data needed by the Governor's Office, the Legislature, and other entities interested in the nursing shortage. There will be no effect on small businesses. There is no additional anticipated economic cost to persons who are required to comply with the proposed new rules.

Written comments on the proposal may be submitted to Katherine A. Thomas, MN, RN, Executive Director, Board of Nurse Examiners, P.O. Box 430, Austin, Texas 78767-0430.

The new sections are proposed pursuant to Texas Occupations Code §301.151 which authorizes the board to propose rules necessary for the performance of its duties and §301.157 which requires the Board to prescribe rules for its programs of study and accreditation.

No other statutes, articles, or codes will be affected by these proposed sections.

§215.1. General Requirements and Purpose of Standards.

(a) General Requirements. The Dean/Director and faculty are accountable for complying with the Board's rules and regulations and the Nursing Practice Act.

(b) Rules for nursing programs shall provide reasonable and uniform standards within which flexibility and creativity, based upon sound educational principles, are possible.

(c) Purpose of Standards.

(1) To promote the safe and effective practice of nursing.

(2) To serve as a guide for the development of new nursing education programs.

(3) To provide criteria for the evaluation of new and established nursing education programs.

(4) To foster the continued improvement of established nursing education programs.

§215.2. Definitions.

Words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) Accredited nursing program

(A) Board accredited nursing program--A nursing program approved by the Board of Nurse Examiners for the State of Texas.

(B) Voluntary accredited nursing program--A nursing program accredited by a Board approved voluntary nursing accrediting body (i.e. NLNAC, CCNE).

(2) Advisory Committee/Board--A group of individuals who provides input to the Board for consideration.

(3) Affiliate agency--An agency, other than the governing institution, which provides learning experiences for students.

(4) Alternative practice settings--settings which provide opportunities for clinical learning experiences although their primary function is not the delivery of health care.

(5) Articulation--A planned process between two or more educational systems to assist students to make a smooth transition from one level of education to another without duplication in learning.

(6) Baccalaureate degree program for registered nurses--A program leading to a bachelor's degree in nursing which admits only registered nurses.

(7) Basic nursing program--An educational unit whose purpose is to prepare practitioners of professional nursing and whose graduates are eligible to apply for initial licensure by examination.

(A) Associate degree program--A program leading to an associate degree in nursing conducted by an educational unit in nursing within the structure of a college or university.

(B) Baccalaureate degree program--A program leading to a bachelor's degree in nursing conducted by an educational unit in nursing which is a part of a senior college or university.

(C) Master's degree program--A program leading to a master's degree, which is an individual's first professional degree in nursing, and conducted by an educational unit in nursing within the structure of a senior college or university.

(D) Diploma program--A program leading to a diploma in nursing conducted by a single purpose school usually under the control of a hospital.

(8) Board--The Board of Nurse Examiners for the State of Texas composed of members appointed by the Governor for the State of Texas.

(9) Board survey visit--An on-site visit to a nursing program by a Board representative for the purpose of evaluating the program of learning and gathering data to support whether the program is meeting the Board's requirements as specified in §§215.2 - 215.13 of this chapter (relating to Definitions; Program Development, Expansion, and Closure; Accreditation; Mission and Goals (Philosophy and Outcomes; Administration and Organization; Faculty Qualifications and Faculty Organization; Students; Program of Study; Management of Clinical Learning Experiences and Resources; Facilities, Resources, and Services; Records and Reports; and Total Program Evaluation).

(10) Clinical learning experiences--Faculty-planned and guided learning activities designed to assist students to meet stated program and course outcomes and to safely apply knowledge and skills when providing nursing care to clients across the life span as appropriate to the role expectations of the graduates. These experiences occur in nursing skills and computer laboratories; in a variety of affiliate agencies or clinical practice settings including, but not limited to: acute care facilities, extended care facilities, clients' residences, and community agencies; and in associated clinical conferences.

(11) Clinical preceptor--A registered nurse or other licensed health professional who meets the minimum requirements in §215.10(f)(5) of this chapter (relating to Management of Clinical Learning Experiences and Resources), not paid as a faculty member by the governing institution, and who directly supervises a student's clinical learning experience. A clinical preceptor facilitates student learning in a manner prescribed by a signed written agreement between the educational institution, preceptor, and affiliate agency (as applicable).

(12) Clinical preceptorship--An organized system of clinical learning experiences which allows a nursing student, under the direction of a faculty member, to attain specific learning objectives under the supervision of a qualified clinical preceptor.

(13) Clinical teaching assistant--A registered nurse licensed in Texas, who is employed to assist and work under the supervision of a Master's or Doctorally prepared faculty member and who meets the minimum requirements in §215.10(g)(4) of this chapter.

(14) Coordinator--A qualified faculty who has the delegated responsibility for the day to day administration of an accredited professional nursing program or one or more distance education initiatives

(15) Course--A specific set of organized learning experiences that must be met within a stated time period. A course involves both organized subject matter and related activities. In a clinical nursing course, the didactic content shall be taught either prior to or concurrent with the related clinical learning experiences.

(16) Curriculum--Content designed to achieve specific educational outcomes.

(17) Dean/Director--A registered nurse who is accountable for administering one or more of the following: basic nursing program or a post-licensure baccalaureate or higher degree program for registered nurses and who meets the requirements as stated in §215.6(f) of this chapter (relating to Administration and Organization).

(18) Differentiated Entry Level Competencies--The expected educational outcomes to be demonstrated by nursing students at the time of graduation as published in *Differentiated Entry Level Competencies of Graduates of Texas Nursing Programs, Vocational (VN), Diploma/Associate Degree (Dip/ADN), Baccalaureate (BSN)*, September 2002.

(19) Distance education initiative--Instruction provided by an accredited nursing program utilizing a variety of instructional methods to any location(s) other than the program at the main campus and where students are required to attend activities such as testing, group conferences, campus laboratory. A distance education initiative may range from offering the entire identical curriculum to offering a single course or multiple courses.

(A) Complete program--Provides the entire program of study at a site other than the program at the main campus.

(B) Partial program--Provides a course or courses from the program of study at a site other than the program at the main campus.

(20) Examination year--A twelve month period defined by the Board.

(21) Faculty currency/clinical competence--Maintenance of up-to-date knowledge and professional practice as demonstrated by certification and/or through participation in: continuing education, professional conferences, advanced academic courses, workshops, research projects, seminars, publications, clinical practice, and/or extended orientation.

(22) Faculty member--An individual employed to teach in the nursing program who meets the requirements as stated in §215.7 of this chapter (relating to Faculty Qualifications and Faculty Organization).

(23) Faculty petition--A request submitted to the Board petitioning to employ an individual who does not meet the requirements stated in §215.7 of this chapter.

(24) Faculty role--The activities which require the time of the faculty member and are related, directly or indirectly, to the performance of his/her professional education duties and responsibilities.

(25) Faculty waiver--A waiver granted by the Board to an individual who has a baccalaureate degree in nursing and is currently licensed in Texas to be employed as a faculty member for a limited period of time.

(26) Governing institution--An accredited college, university, or hospital responsible for the administration and operation of a Board accredited nursing program.

(27) Health care professional--An individual other than a RN who holds at least a bachelor's degree in the health care field,

including, but not limited to: respiratory therapists, physical therapists, occupational therapists, dietitians, pharmacists, physicians, social workers and psychologists.

(28) Instructional Methods--Includes traditional methods of delivering instruction such as lecture and group work, as well as innovative methods such as on-line courses and interactive television.

(29) Mission--The purpose and overall role of the educational unit in nursing which are consistent with those of the governing institution.

(30) Mobility--The ability to advance without educational barriers.

(31) Observational experience--An assignment to a facility or unit where students observe the functions of the facility and the role of nursing within the facility, but where students do not participate in patient/client care.

(32) Pass rate--The percentage of first-time candidates within one examination year who pass the National Council Licensure Examination for Registered Nurses.

(33) Philosophy--The underlying belief system of the educational nursing unit.

(34) Post-Licensure nursing program--An educational unit the purpose of which is to provide mobility options for registered nurses to attain undergraduate academic degrees in nursing. Post-licensure programs may be components of educational units within basic nursing programs or independent baccalaureate degree programs for registered nurses as defined in this section.

(35) Pre-Licensure nursing program--See basic nursing program.

(36) Professional Nursing Program--An educational entity that offers the courses and learning experiences that constitute the requirements for a basic nursing program (diploma program, associate degree program, baccalaureate degree program, master's degree alternate entry program) or a post-licensure program.

(37) Professional nursing student--An individual enrolled in a professional nursing program who has met admission criteria and is designated as a nursing student according to governing institution's policies.

(38) Program goals/outcomes--The expected competencies of program graduates with regard to professional nursing practice.

(39) Program of study--The courses and learning experiences that constitute the requirements for completion of a basic nursing program (associate degree program, baccalaureate degree program, master's degree program, or diploma program) or a post-licensure nursing program.

(40) Shall and must--Mandatory requirements.

(41) Should--A recommendation.

(42) Staff--Employees of the Board of Nurse Examiners.

(43) Supervision--Immediate availability of a faculty member, clinical preceptor, or clinical teaching assistant to coordinate, direct, and observe at first hand the practice of students.

§215.3. Program Development Expansion and Closure.

(a) New programs.

(1) Proposal to develop a professional pre-licensure or post-licensure nursing program.

(A) A governing institution accredited by a Board recognized accrediting body is eligible to submit a proposal to develop a professional nursing program. Notice of intent to establish a nursing program shall be submitted in writing 12 - 18 months prior to the anticipated start of the program.

(B) The proposal shall be completed under the direction/consultation of a registered nurse who holds at least a master's degree in nursing and who has teaching and administrative experience in the type of program being proposed.

(C) The proposal shall include information outlined in Board guidelines.

(D) The proposal will be considered by the Board following a public hearing at a regularly scheduled meeting of the Board. The Board may approve the proposal, may defer action on the proposal, or may deny further consideration of the proposal.

(2) Application for initial accreditation.

(A) Following approval to develop a professional nursing program, a director, faculty, and support staff shall be employed to develop the application for initial licensure as outlined in an Order of the Board.

(B) Initial accreditation must be granted prior to admission of students.

(C) The director and faculty shall plan the program of learning.

(D) The application shall include information outlined in Board guidelines.

(E) The Board shall review the application and supporting evidence at a regularly scheduled meeting. If the program is based upon sound educational principles and is in compliance with the Board's requirements as specified in §§215.2 - 215.13 of this chapter (relating to Definitions; Program Development, Expansion, and Closure; Accreditation; Mission and Goals (Philosophy and Outcomes); Administration and Organization; Faculty Qualifications and Faculty Organization; Students; Program of Study; Management of Clinical Learning Experiences and Resources; Facilities, Resources, and Services; Records and Reports; and Total Program Evaluation), then initial accreditation may be granted and an initial accreditation fee assessed per §223.1 of this title (relating to Fees).

(3) Survey visits shall be conducted, as necessary, by staff until full accreditation is granted.

(b) Program Expansion

(1) Only nursing programs that have full accreditation are eligible to initiate or modify distance education initiatives.

(2) Instruction provided for the distance education initiative may include a variety of instructional methods and shall be congruent with the program's curriculum plan and shall enable students to meet the goal, objectives, and competencies of the educational program and requirements of the Board as stated in §§215.2 - 215.13 of this chapter.

(3) A program intending to establish a distance education initiative shall:

(A) Notify the board at least four months prior to implementation of distance education initiatives by any accredited program, and

(B) Submit required information according to board approved guidelines.

(C) Provide documentation of notification to the Regional Council of the governing institution about plans for establishment of distance education initiatives shall be provided to the Board at least four months prior to implementation, as appropriate.

(D) Provide evidence of approval from the Texas Higher Education Coordinating Board and other regulating/accrediting bodies shall be provided to the Board prior to implementation, as appropriate.

(4) Nursing programs planning to close a distance education initiative shall submit notification to the Board at least four months prior to closing, using the board guidelines which includes the date of closure and rationale.

(5) Distance education initiatives of basic nursing programs which have been closed may be reactivated by submitting notification of reactivation to the Board at least 4 months prior, using the board guidelines for initiating a distance education initiative.

(c) Transfer of Administrative Control by Governing Institutions.

(1) A governing institution of a professional nursing education program which has Full Accreditation status may request permission from the Board to transfer administrative control.

(A) A governing institution that proposes to transfer administrative control of a nursing program to another governing institution accredited by aboard recognized accrediting body shall submit:

(i) notice of intent to transfer administrative control in writing to the Board 12 months prior to the anticipated date of transfer; and

(ii) a written plan for closure of the nursing program as required by subsection (d) of this section.

(B) The governing institution which will assume responsibility for the program shall submit a Proposal to Assume Administrative Control to the Board six months prior to a regularly scheduled Board meeting.

(i) The proposal shall be completed under the direction/consultation of a registered nurse who holds at least a master's degree in nursing and who has teaching and administrative experience in the type of program being proposed.

(ii) The proposal shall include information outlined inboard approved guidelines.

(iii) The proposal shall include documentation of Texas Higher Education Coordinating Board approval, as applicable.

(iv) The proposal will be considered by the Board at a regularly scheduled meeting.

(v) The Board may approve, may defer action, or may deny further consideration of the proposal.

(2) Accreditation status of transferred nursing program(s).

(A) If the governing institution that is assuming administrative control previously has been responsible for an accredited professional nursing program and does not intend to change the program of study then the professional nursing education program shall maintain its accreditation status.

(B) If the governing institution that is assuming administrative control previously has been responsible for an accredited professional nursing program and intends to alter the program of study then that governing institution shall submit a proposal to change the

program of study in accordance with §215.9(i) of this chapter (relating to Program of Study).

(C) If the governing institution that is assuming administrative control has not previously been responsible for an accredited professional nursing program then that governing institution shall submit an application for initial accreditation in accordance with subsection (a)(2) of this section.

(d) Closing a Program.

(1) When the decision to close a program which provides the entire program of study has been made, the director must notify the Board and submit a written plan for closure which includes the following:

(A) reason for closing the program;

(B) date of intended closing;

(C) academic provisions for students;

(D) provisions made for access to and safe storage of vital school records, including transcripts of all graduates; and

(E) methods to be used to maintain requirements and standards until the program closes.

(2) The program or distance education initiative shall continue within standards until all classes, which are enrolled at the time of the decision to close, have graduated. In the event this is not possible, a plan must be developed whereby students may transfer to other accredited programs.

(3) Programs that close a DEI which provides the full program of study shall notify the board office in writing at least four months prior to the intent to close, providing:

(A) location and name of the program;

(B) reason; and

(C) the date of the intended closure.

§215.4. Accreditation.

(a) The progressive designation of accreditation status is not implied by the order of the following listing. Accreditation status is based upon each program's performance and demonstrated compliance to the Board's requirements. Change from one status to another is based on NCLEX-RN® examination pass rates and annual reports or survey visits. Types of accreditation include:

(1) Initial accreditation. Initial accreditation is written authorization to admit students and is granted if the program meets the requirements of the Board.

(2) Full accreditation-basic nursing program. Full accreditation is granted to a basic nursing program after the program has documented compliance with subsection (c)(2)(A) of this section. Only programs with full accreditation status may propose distance education initiatives and petition for faculty waivers.

(3) Full Accreditation-post-licensure nursing programs. Full accreditation is granted to a post-licensure nursing program after one class has completed the program and is based upon evidence that the program meets the Board's legal and educational requirements.

(4) Warning.

(A) Issuance of warning. When the Board determines that a program is not meeting legal and educational requirements, the program is issued a warning, is provided a list of the deficiencies, and is given a specified time in which to correct the deficiencies.

(B) Failure to correct deficiencies. If the program fails to correct the deficiencies within the prescribed period the Board may restrict admissions or other program activities until the deficiencies are corrected or the Board may place the program on conditional accreditation or withdraw accreditation.

(5) Conditional accreditation. Conditional accreditation is granted for a time specified by the Board in order to provide additional time to correct deficiencies.

(A) The program shall not admit students while on conditional status.

(B) The Board may establish specific criteria to be met in order for the program's conditional accreditation status to be removed.

(C) Depending upon the degree to which the Board's legal and educational requirements are met, the Board may change the accreditation status to full, warning, or withdraw accreditation.

(b) Withdrawal of accreditation. A program which fails to meet legal and educational requirements of the Board within the specified time shall be removed from the list of state accredited nursing programs. Reasons for withdrawal of accreditation include but are not limited to:

(1) Continued lack of compliance with minimum requirements as set out in this chapter, and

(2) Failure to meet specific criteria set out by the Board.

(c) Accreditation procedures. The continuing accreditation status of each program shall be determined annually by the Board based upon:

(1) Review of annual report. Each accredited professional nursing program shall submit an annual report regarding its compliance with the Board's legal and educational requirements. Accreditation status is determined on the basis of the program's annual report, NCLEX-RN® examination pass rate, and other pertinent data when a program is not visited by staff during the examination year.

(2) Pass rate of graduates on NCLEX-RN® examination.

(A) In order for the nursing program to attain or maintain full accreditation, 80% of first-time candidates who complete the program of study must achieve a passing score on the NCLEX-RN® examination for two consecutive examination years.

(B) When first-time candidates who complete the nursing program of study fail to achieve at least 80% during one examination year, the nursing program shall submit a self-study report that evaluates factors which contributed to the graduates' performance on the NCLEX-RN® examination and a description of the corrective measures to be implemented. The report shall follow Board guidelines.

(C) A warning will be issued to the program based on the pass rate when the pass rate of first-time candidates, as described in subparagraph (A) of this paragraph, is less than 80% for two consecutive examination years.

(D) A program may be placed on conditional accreditation status if, within one examination year from the date of the warning, the performance of graduates fails to be at least 80%, or the faculty fail to implement appropriate corrective measures.

(E) Accreditation may be withdrawn if the performance of graduates fails to be at least 80% during the examination year following the date that the program is placed on conditional accreditation.

(F) A program placed on warning or conditional accreditation status may request a review of the program accreditation status by the Board at a regularly scheduled meeting if the program's pass rate for first-time candidates during one examination year is at least 80%.

(d) Survey visit. Each nursing program will be visited at least every six years after full accreditation has been granted, unless accredited by a Board recognized voluntary accrediting body.

(1) The Board may authorize staff to conduct survey visit at any time based upon established criteria.

(2) After a program is fully accredited by the Board, a report from a Board recognized voluntary accrediting body regarding a program's accreditation status may be accepted in lieu of a Board survey visit.

(3) A written report of the survey visit, annual report, and NCLEX-RN® examination pass rate will be reviewed by the Board at a regularly scheduled meeting.

(e) Notice of a program's accreditation status will be sent to the director, chief administrative officer of the governing institution, and others as determined by the Board.

§215.5. Mission and Goals (Philosophy and Outcomes).

(a) The mission and goals (philosophy and outcomes) of the nursing program shall be consistent with the mission of the governing institution. They shall reflect the diversity of the community served and shall be consistent with professional, educational, and ethical standards of nursing.

(b) The written mission and goals (philosophy and outcomes) shall be used as a basis for planning, organizing, implementing and evaluating the program and shall be shared with the students.

(c) The program outcomes or objectives shall be consistent with the program's philosophy or mission.

(d) The faculty shall periodically review the mission and goals (philosophy and outcomes) and shall make revisions to maintain currency.

§215.6. Administration and Organization.

(a) The governing institution shall be accredited by a Board recognized accrediting agency.

(b) There shall be an organizational chart which demonstrates the relationship of the professional nursing program to the governing institution, and indicates lines of responsibility and authority, and channels of communication.

(c) In colleges and universities, the program shall have comparable status with other academic units in such areas as rank, promotion, tenure, leave, benefits and professional development.

(d) Salaries shall be adequate to recruit, employ, and retain sufficient qualified faculty members with graduate preparation and expertise necessary for students to meet program goals.

(e) The governing institution shall provide financial support and resources needed to operate a program which meets the legal and educational requirements of the Board and fosters achievement of program goals. The financial resources shall support adequate educational facilities, equipment, and qualified administrative and instructional personnel.

(f) Each basic nursing program shall be administered by a qualified nurse faculty member who is accountable for the planning, implementation and evaluation of the professional nursing education program. The dean/director shall:

(1) hold a current license or privilege to practice as a registered nurse in the state of Texas;

(2) hold a master's degree in nursing;

(3) hold a doctoral degree, if administering a baccalaureate or master's degree program;

(4) have a minimum of three years teaching experience in a professional nursing education program; and

(5) have demonstrated knowledge, skills and abilities in administration within a professional nursing education program.

(g) When the director of the program changes, the director shall submit to the Board written notification of the change indicating the final date of employment.

(1) A new director qualification form shall be submitted to the office by the governing institution for approval prior to appointing a new director for an existing program or a new nursing program.

(2) A vitae and all official transcripts shall be submitted with the new director qualification form.

(3) If an acting director is appointed to fill the position of the director, this appointment shall not exceed one year.

(4) In a fully accredited professional nursing program, if the individual to be appointed as director does not meet the requirements for director as specified in subsection (f) of this section, the administration is permitted to petition for a waiver of the Board's requirements prior to the appointment of said individual.

(h) A newly appointed dean/director or acting dean/director of a professional nursing education program shall attend an orientation provided by the Board within one year of the appointment.

§215.7. Faculty Qualifications and Faculty Organization.

(a) There shall be written personnel policies for nursing faculty that are in keeping with accepted educational standards and are consistent with those of the governing institution. Policies which differ from those of the governing institution shall be consistent with nursing unit mission and goals (philosophy and outcomes).

(1) Policies concerning workload for faculty and the dean/director shall be in writing.

(2) Sufficient time shall be provided faculty to accomplish those activities related to the teaching-learning process.

(3) Teaching activities shall be coordinated among full-time, part-time faculty, clinical preceptors and clinical teaching assistants.

(4) If the director is required to teach, he or she shall carry a teaching load of no more than three clock hours per week.

(b) A nursing education program shall employ sufficient faculty members with graduate preparation and expertise necessary to enable the students to meet the program goals. The number of faculty members shall be determined by such factors as:

(1) The number and level of students enrolled;

(2) The curriculum plan;

(3) Activities and responsibilities required of faculty;

(4) The number and geographic locations of affiliate agencies and clinical practice settings; and

(5) The level of care and acuity of clients.

(c) Faculty Qualifications.

(1) Documentation of faculty qualifications shall be included in the official files of the program. Each nurse faculty member shall:

(A) Hold a current license or privilege to practice as a registered nurse in the State of Texas;

(B) Show evidence of teaching abilities and maintaining current knowledge, clinical expertise, and safety in subject area of teaching responsibility;

(C) Hold a master's degree, preferably in nursing. A nurse faculty member holding a master's degree in a discipline other than nursing shall hold a bachelor's degree in nursing from an accredited baccalaureate program in nursing; and

(i) if teaching in a diploma or associate degree nursing program, shall have at least six semester hours of graduate level content in nursing appropriate to his/her teaching responsibilities, or

(ii) if teaching in a baccalaureate level program, shall have at least 12 semester hours of graduate level content in nursing appropriate to his/her teaching responsibilities.

(D) In fully accredited programs, if an individual to be appointed as faculty member does not meet the requirements for faculty as specified in this subsection, the dean/director is permitted to petition for a waiver of the Board's requirements prior to the appointment of said individual.

(E) In baccalaureate programs, an increasing number of faculty members should hold doctoral degrees appropriate to their responsibilities.

(2) Nursing as well as non-nursing faculty who teach non-clinical nursing courses, e.g., pathophysiology, pharmacology, research, management and statistics, shall have graduate level educational preparation appropriate to these areas of responsibility.

(3) Non-nursing faculty shall be required to co-teach with nursing faculty in order to meet nursing course objectives.

(d) Teaching assignments shall be commensurate with the faculty member's education and experience in nursing.

(e) The faculty shall be organized with written policies and procedures and/or bylaws to guide the faculty and program's activities.

(f) The faculty shall meet regularly and function in such a manner that all members participate in planning, implementing, and evaluating the nursing program. Such participation includes, but is not limited to the initiation and/or change of academic policies, personnel policies, curriculum, utilization of affiliate agencies, and program evaluation.

(1) Committees necessary to carry out the functions of the program shall be established with duties and membership of each committee clearly defined in writing.

(2) Minutes of faculty organization and committee meetings shall document the reasons for actions and the decisions of the faculty and shall be available for reference.

(g) There shall be written plans for faculty orientation, development, and evaluation.

(1) Orientation of new faculty members shall be initiated at the onset of employment.

(2) A program of faculty development shall be offered to encourage and assist faculty members to meet the nursing program's needs as well as individual faculty member's professional development needs.

(3) A variety of means shall be used to evaluate faculty performance such as self, student, peer and administrative evaluation.

§215.8. Students.

(a) Students should have mechanisms for input into the development of academic policies and procedures, curriculum planning, and evaluation of teaching effectiveness.

(b) The number of students admitted to the program shall be determined by the number of qualified faculty, adequate educational facilities and resources, and the availability of appropriate clinical learning experiences for students.

(c) Written policies regarding nursing student admission and progression shall be developed and implemented in accordance with the requirements that the governing institution must meet to maintain accreditation. Student policies which differ from those of the governing institution shall be in writing and shall be made available to faculty and students.

(d) Policies shall facilitate mobility/articulation, be consistent with acceptable educational standards, and be available to students and faculty.

(e) Students shall have the opportunity to evaluate faculty, courses, and learning resources and these evaluations shall be documented.

(f) Individuals enrolled in accredited professional nursing programs preparing students for initial licensure shall be provided verbal and written information regarding conditions that may disqualify graduates from licensure and of their rights to petition the Board for a Declaratory Order of Eligibility. Required eligibility information includes:

(1) Texas Occupations Code §301.253 and §§301.452 - 301.468.

(2) Sections 213.27 - 213.30 of this title (relating to Good Professional Character, Licensure of Persons with Criminal Convictions, Criteria and Procedure Regarding Intemperate Use and Lack of Fitness and Declaratory Order of Eligibility for Licensure).

(g) The nursing program shall maintain written receipt of eligibility notification for up to six months after the individual enrolled completes the nursing program or permanently withdraws from the nursing program.

(h) The Director of the Nursing Program shall submit an affidavit each year with the Annual Report which verifies that enrolled students received the eligibility information.

§215.9. Program of Study.

(a) The program of study shall be:

(1) at least the equivalent of two academic years and shall not exceed four calendar years;

(2) planned, implemented, and evaluated by the faculty;

(3) based on the mission and goals (philosophy and outcomes);

(4) organized logically, sequenced appropriately;

(5) based on sound educational principles;

(6) designed to prepare graduates to practice according to the Standards of Nursing Professional Practice as set forth in the Board's Rules and Regulations; and

(7) designed and implemented to prepare students to demonstrate the Differentiated Entry Level Competencies of Graduates of Texas Nursing Programs, Vocational (VN), Diploma/Associate Degree (Dip/ADN), Baccalaureate (BSN).

(b) There shall be a reasonable balance between non-nursing courses and nursing courses which are offered in a supportive sequence with rationale and are clearly appropriate for collegiate study.

(c) There shall be a rationale for the ratio of contact hours assigned to classroom and clinical learning experiences. The recommended ratio is three contact hours of clinical learning experiences for each contact hour of classroom instruction.

(d) The program of study should facilitate articulation among programs.

(e) The program of study shall include, but not be limited to the following areas:

(1) non-nursing courses, clearly appropriate for collegiate study, offered in a supportive sequence.

(2) nursing courses which include didactic and clinical learning experiences in the four content areas which includes medical-surgical, maternal child health, pediatrics and mental health nursing that teach students to use a systematic approach to clinical decision making and prepare students to safely practice professional nursing through the promotion, prevention, rehabilitation, maintenance, and restoration of the health of individuals of all ages.

(A) Course content shall be appropriate to the role expectations of the graduate.

(B) Professional values including ethics, safety, diversity, and confidentiality shall be addressed.

(C) The Nursing Practice Act, Standards of Professional Nursing Practice, Unprofessional Conduct Rules, Delegation Rules, and other laws and regulations which pertain to various practice settings shall be addressed.

(3) Nursing courses shall prepare students to recognize and analyze health care needs, select and apply relevant knowledge and appropriate methods for meeting the health care needs of individuals and families, and evaluate the effectiveness of the nursing care.

(4) Baccalaureate and entry-level master's degree programs in nursing shall include learning activities in basic research and management/leadership, and didactic and clinical learning experiences in community health nursing.

(f) The learning experiences shall provide for progressive development of values, knowledge, judgment, and skills.

(1) Didactic learning experiences shall be provided either prior to or concurrent with the related clinical learning experiences.

(2) Clinical learning experiences shall be sufficient in quantity and quality to provide opportunities for students to achieve the stated outcomes.

(3) Students shall have sufficient opportunities in simulated or clinical settings to develop manual technical skills, using contemporary technologies, essential for safe, effective nursing practice.

(4) Learning opportunities shall assist students to develop communication and interpersonal relationship skills.

(g) Faculty shall develop and implement evaluation methods and tools to measure progression of students' cognitive, affective and psychomotor achievement in course/clinical objectives according to Board guidelines.

(h) Staff approval is required prior to implementation of major curriculum changes by a professional nursing program. Proposed changes shall include information outlined in Board guidelines and shall be reviewed using Board standards.

(1) Changes that require approval include:

(A) changes in program mission and goals (philosophy and outcomes) which result in a reorganization or re-conceptualization of the entire curriculum, including but not limited to changing from a block to an integrated curriculum.

(B) the addition of transition course(s), tracks/alternative programs of study that provide educational mobility.

(C) all programs implementing a major curriculum change shall provide an evaluation of the outcomes of these changes and submit with the Annual Report through the first graduating class.

(2) All other revisions such as editorial updates of mission and goals or redistribution of course content or course hours shall be reported to the Board in the Annual Report.

(3) Documentation of Governing Institution approval or Texas Higher Education Coordinating Board approval must be provided to the Board prior to implementation of changes, as appropriate.

(i) Nursing programs that have full accreditation and are undergoing major curriculum changes shall submit an abbreviated proposal to the office for approval at least 4 months prior to implementation. The abbreviated proposal shall contain the following:

(1) the new philosophy, major concepts;

(2) program and course outcomes; and

(3) clinical evaluation tools for each clinical course.

(j) Nursing programs not having full accreditation and are undergoing a major curriculum change shall submit a full curriculum proposal and meet the requirements as outlined in subsection (h) of this section.

§215.10. Management of Clinical Learning Experiences and Resources.

(a) In all cases faculty shall be responsible and accountable for managing clinical learning experiences and observational experiences of students.

(b) Faculty shall develop criteria for the selection of affiliate agencies or clinical practice settings which address safety and the need for students to achieve the program outcomes (goals) through the practice of nursing care or observational experiences.

(c) Faculty shall select and evaluate affiliate agencies or clinical practice settings which provide students with opportunities to achieve the goals of the program.

(1) Written agreements between the program and the affiliate agencies shall specify the responsibilities of the program to the agency and the responsibilities of the agency to the program.

(2) Agreements shall be reviewed periodically and include provisions for adequate notice of termination.

(d) The faculty member shall be responsible for the supervision of students in clinical learning experiences.

(1) When a faculty member is the only person officially responsible for a clinical group, then the group may total no more than ten (10) students. Patient safety shall be a priority and may mandate ratios as low as one faculty member to six students. The faculty member must supervise that group in only one facility at a time, unless some

portion or all of the clinical group are assigned to observational experiences in additional settings.

(2) Direct faculty supervision is not required for an observational experience.

(A) Observational experiences may be used to supplement, but not replace patient care experiences, and must serve the purpose of student attainment of clinical objectives.

(B) Observational experiences should comprise no more than 20% of the clinical contact hours for a course and no more than 10% of the clinical contact hours for the program-of-study.

(e) Faculty may use clinical preceptors or clinical teaching assistants to enhance clinical learning experiences and to assist faculty in the clinical supervision of students.

(1) Faculty shall develop written criteria for the selection of clinical preceptors and clinical teaching assistants.

(2) When clinical preceptors or clinical teaching assistants are used, written agreements between the professional nursing program, clinical preceptor or clinical teaching assistant, and the affiliating agency, when applicable, shall delineate the functions and responsibilities of the parties involved.

(3) Faculty shall be readily available to students and clinical preceptors or clinical teaching assistants during clinical learning experiences.

(4) The designated faculty member shall meet periodically with the clinical preceptors or clinical teaching assistants and student(s) for the purpose of monitoring and evaluating learning experiences.

(5) Written clinical objectives shall be shared with the clinical preceptors or clinical teaching assistants prior to or concurrent with the experience.

(f) Clinical preceptors may be used to enhance clinical learning experiences after a student has received clinical and didactic instruction in all basic areas of nursing or within a course after a student has received clinical and didactic instruction in the basic areas of nursing for that course or specific learning experience.

(1) In courses which use clinical preceptors for a portion of clinical learning experiences, faculty shall have no more than 12 students in a clinical group.

(2) In a course which uses clinical preceptors as the sole method of student instruction and supervision in clinical settings, faculty shall coordinate the preceptorships for no more than 24 students.

(3) The preceptor may supervise student clinical learning experiences without the physical presence of the faculty member in the affiliate agency or clinical practice setting.

(4) The preceptor shall be responsible for the clinical learning experiences of no more than two students per clinical day.

(5) Clinical preceptors shall have the following qualifications:

(A) competence in designated area of practice;

(B) philosophy of health care congruent with that of the nursing program; and

(C) current licensure or privilege as a registered nurse;
or

(D) if not a registered nurse, a current license in Texas as a health care professional with a minimum of a bachelor's degree in that field.

(g) Clinical teaching assistants may assist qualified and experienced faculty clinical learning experiences.

(1) In clinical learning experiences where a faculty member is supported by a clinical teaching assistant, the ratio of faculty to students shall not exceed 2:15 (faculty plus clinical teaching assistant: student).

(2) Clinical teaching assistants shall supervise student clinical learning experiences only when the qualified and experienced faculty member is physically present in the affiliate agency or alternative practice setting.

(3) When acting as a clinical teaching assistant, the RN shall not be responsible for other staff duties, such as supervising other personnel and/or patient care.

(4) Clinical teaching assistants shall meet the following criteria:

(A) hold a current license or privilege to practice as a registered nurse in the State of Texas;

(B) hold a bachelor's degree in nursing from an accredited baccalaureate program in nursing; and

(C) have the clinical expertise to function effectively and safely in the designated area of teaching.

§215.11. Facilities, Resources, and Services.

(a) The governing institution shall be responsible for providing:

(1) educational facilities,

(2) resources, and

(3) services which support the effective development and implementation of the nursing education program.

(b) The director and faculty shall have adequate secretarial and clerical assistance to meet the needs of the program.

(c) The physical facilities shall be adequate to meet the needs of the program in relation to the size of the faculty and the student body.

(1) The director shall have a private office.

(2) Faculty offices shall be conveniently located and adequate in number and size to provide faculty with privacy for conferences with students and uninterrupted work.

(3) Space for clerical staff, records, files, and equipment shall be adequate.

(4) There shall be mechanisms which provide for the security of sensitive materials, such as examinations and health records.

(5) Classrooms, laboratories, and conference rooms shall be conducive to learning and adequate in number, size, and type for the number of students and the educational purposes for which the rooms are used.

(d) The learning resources, library, and departmental holdings shall be current, use contemporary technology appropriate for the level of the curriculum, and be sufficient for the size of the student body and the needs of the faculty.

(1) Provisions shall be made for accessibility, availability, and timely delivery of information resources.

(2) Facilities and policies shall promote effective use, i.e. environment, accessibility, and hours of operation.

§215.12. Records and Reports.

(a) Accurate and current records shall be maintained in a confidential manner and be accessible to appropriate parties. These records shall include, but are not limited to:

- (1) records of current students;
- (2) transcripts/permanent record cards of graduates;
- (3) faculty records;
- (4) administrative records, which include minutes of faculty meetings for the past three years, annual reports, and school catalogs;
- (5) the current program of study and curriculum including mission and goals (philosophy and outcomes), and course outlines;
- (6) agreements with affiliate agencies; and
- (7) the master plan of evaluation with most recent data collection.

(b) Records shall be safely stored to prevent loss, destruction, or unauthorized use.

(c) The director shall submit an Annual Report each year.

§215.13. Total Program Evaluation.

(a) There shall be a written plan for the systematic evaluation of the total program. The plan shall include methodology, frequency of evaluation, assignment of responsibility, evaluative criteria, and indicators of program and instructional effectiveness. The following broad areas shall be periodically evaluated:

- (1) organization and administration of the program;
- (2) mission and goals (philosophy and outcomes);
- (3) program of study, curriculum, and instructional techniques;
- (4) education facilities, resources, and services;
- (5) affiliate agencies and clinical learning activities;
- (6) students' achievement;
- (7) graduates' performance on the licensing examination;
- (8) graduates' nursing competence;
- (9) faculty members' performance; and
- (10) advisory committees.

(b) All evaluation methods and instruments shall be periodically reviewed for appropriateness.

(c) Implementation of the plan for total program evaluation shall be documented in the minutes.

(d) Major changes in the nursing program shall be evidence-based and supported by rationale.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302768

Katherine Thomas

Executive Director

Board of Nurse Examiners

Earliest possible date of adoption: June 15, 2003

For further information, please call: (512) 305-6823

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CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.2, §217.4

The Board of Nurse Examiners proposes amendments to 22 TAC §217.2 and §217.4, concerning Licensure, Peer Assistance, and Practice. The proposed amendments would specifically address Licensure by Examination for Graduates of Basic Nursing Education Programs Within the United States', its Territories or Possessions, and Requirements for Initial Licensure by Examination for Nurses Who Graduate from Professional Nursing Programs Outside of the United States' Jurisdiction, respectively.

The Texas Government Code requires that each rule adopted by an agency after September 1, 1997 be reviewed to determine if the reason for adopting the rule continues to exist. Chapter 217 was last reviewed in 1999. Staff of the board took the opportunity to compare the rules with the National Council of State Boards of Nursing (NCSBN) Uniform Licensure Requirements which were published in July of 1999. The comparison assisted board staff in identifying differences between the Texas requirements and those published by the NCSBN and has resulted in the proposed amendments to §217.2 and §217.4. Amending the rules will increase compatibility between the Texas requirements and NCSBN's uniform licensure requirements. Additionally, the office received a letter from the Texas Nurses Association in March 2003 requesting a review of §217.4 in order to determine whether or not "differing criteria have been imposed" on foreign graduates with a particular focus on the Mexico-educated nurse.

National Council's Nursing Practice and Education Committee developed the core licensure requirements over a two-year period and defined these requirements as "those minimum requirements that are essential to promote public protection." Factors such as nurse mobility, maintenance of licensure standards designed to ensure the public protection, and regulatory barriers were also considered. The committee believed that increasing consistency in the licensure requirements among the various jurisdictions was an appropriate regulatory approach. The committee developed uniform core requirements for initial licensure for nurses graduating in the United States as well as for those completing programs outside of the United States.

The Texas rules differed in the number of attempts that applicants were permitted to take the NCLEX-RN® licensing examination. Texas rules currently specify that a candidate has three attempts within four years of the date of completion of requirements for graduation or three attempts within four years of the date of eligibility to pass the exam before additional education is required, i.e. repeat a nursing curriculum or the entire program of study.

The NCSBN core requirements permit unlimited attempts on the exam both for U.S. graduates and for graduates of programs outside of U.S. jurisdiction. According to NCSBN, repeat candidates would not be exposed to the same test items due to the large pool of test questions, and NCSBN has a policy that candidates must wait 91 days between each test attempt. (The pool of test questions is rotated at that time.)

The board concurs that there is no justification to continue to limit the number of attempts on the examination due to the availability of a large test pool of questions. The board's staff had

been reviewing the issues relating to unlimited attempts on the examination over the course of the last several years and this particular recommendation was not related to any specific feedback but rather an increasing awareness that nurses who were unsuccessful after three attempts could test in other states and then endorse into Texas.

If the rules are amended as proposed, candidates could test every 101 days (three attempts/year) for four years after completion of the requirements for graduation or for four years after the date of eligibility. Candidates would have a total of 14 attempts to be successful on the exam prior to being required to re-educate. Currently, the board endorses registered nurses from other states who have taken the NCLEX-RN® more than three times before passing the examination.

The board also proposes that the requirement for the CGFNS certificate be amended to offer the foreign educated applicant a choice. The CGFNS certificate has three components, i.e. a Credential Evaluation Service Full Education Course-by-Course Report, a Qualifying examination, and an English proficiency test. The board proposes that the applicant can choose whether or not to submit a certificate or to submit the Credential Evaluation Service and an English test. The Qualifying exam is currently offered three times per year and completion of the initial application process is hampered by the test availability. Although the Qualifying examination offers an opportunity for the nurse to become more aware of what the NCLEX-RN® is like; staff does not consider it to be an essential requirement for licensure. The Education report and English proficiency test are essential.

It should be noted, however, that both U.S. and foreign-educated graduates have historically been required to re-educate if they were not successful in three attempts within four years of graduation or within four years of the date of eligibility. The board does not believe that the four-year time limit should be changed and that candidates who are unsuccessful after the four-year time frame should continue to be required to complete another program of study.

RNs who are placed on inactive status (at their request) cannot be considered analogous to the foreign graduate who has no recent professional practice experience. The U.S. graduate has already been licensed as a RN in this country, has taken and passed the NCLEX® examination, is proficient in the English language, and has experience in the U.S. health care system. Additionally, a RN who requests to reactivate an inactive license after four years (or RNs who have been delinquent for four or more years) are required to complete a nurse refresher course/extensive orientation to the practice of professional nursing before they are eligible for licensure. They are required to obtain a temporary permit because there is a clinical component to the course. Only after completion of the course, along with supporting documentation, may the nurse be considered for licensure under current requirements.

Foreign graduates who have no recent practice experience in their country of licensure, who have not taken and passed the NCLEX® exam and who have no experience in the U.S. health care system raise concerns about how well they will function in the U.S. health care system from the public safety perspective. The board originally believed that those candidates that did not have current work experience within two of the last four years immediately preceding the filing of an application for initial licensure should continue to be required to complete another nursing education program as the rule currently specifies.

TNA has requested consideration of an alternate mechanism, i.e. to require foreign-educated nurses to complete a nurse refresher course after they have taken and passed the NCLEX® exam. While the board believes that the initial licensure requirements should be consistent for all applicants who have completed nursing programs outside of U.S. jurisdiction, discussions have focused on what is required to ensure entry-level competence in the interest of client safety but would not be considered a regulatory barrier to obtaining a license in a time of a nursing shortage or be considered unfair to the foreign-educated nurse.

Proposed amendment language addresses a requirement for completion of a Nurse Refresher course under specific circumstances. The board has amended §217.4 to allow a foreign nurse who has practiced in the role of a first level general nurse for two years to take a refresher course approved by the board if they have not practiced four years prior to seeking a Texas license rather than re-educating.

Kathy Thomas, Executive Director, has determined that for the first five-year period the proposed amendments are effective there will be no fiscal implications for state or local government.

Ms. Thomas has determined that the public benefit for the first five-year period of amending the rules is a more consistent criteria being applied to foreign graduates as to U.S. graduates. This consistency would ease the transition for foreign nurses to practice in Texas and help address the continuing shortage of nurses in this state. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Comments on the proposed amendments may be submitted in writing to Kathy Thomas, Executive Director, Board of Nurse Examiners for the State of Texas, 333 Guadalupe, Suite 3-460, Austin, Texas 78701. Comments will be accepted and considered for 30 days following the publication of this proposal in the *Texas Register*.

The amendments are proposed under the authority of Texas Occupations Code §301.151 and §301.255 that authorizes the Board of Nurse Examiners to adopt and enforce rules consistent with its legislative authority under the Nursing Practice Act.

The proposed amendments will affect Texas Occupations Code §301.255 and §301.259.

§217.2 Licensure by Examination for Graduates of Basic Nursing Education Programs Within the United States, its Territories, or Possessions.

(a) An applicant for initial licensure by examination shall:

(1) file a complete application containing data required by the board; notarized affidavit; and the required application processing fee which is not refundable;

(2) submit verification of completion of all requirements for graduation from an accredited nursing program or certification from the nursing program director of completion of all baccalaureate degree requirements which are prerequisites of an accredited masters degree program leading to a first degree in professional nursing; and

(3) pass the NCLEX-RN®.

(b) Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue determined by way of a Petition for Declaratory Order, (*see* §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure) and Texas Occupations Code §301.257 relating to Declaratory Order of License Eligibility [Texas Civil Statutes, Article 4549a]) then the

application will be treated and processed as a Petition for Declaratory Order and the applicant will be required to pay the appropriate non-refundable fees for determination of eligibility. Should the Board in its final determination find that the individual is not eligible for licensure, then that individual is precluded from again petitioning, or applying to the Board for admission to the examination except when the impediment to eligibility [for licensure] has been removed. In no event, may an applicant repetition for a declaratory order before the first anniversary of the date of the Board's determination to deny eligibility. Any subsequent petition must be made in the manner and form the Board requires. [; such as when an applicant receives a full and unconditional pardon for prior criminal convictions.]

(c) An applicant for initial licensure by examination shall pass the NCLEX-RN® [within three attempts and] within four years of completion of requirements for graduation.

~~{(1) An applicant who fails the NCLEX-RN® may retake the examination no more than two times without additional education.}~~

~~{(2) An applicant who is unsuccessful after three attempts within four years of completion of the requirements for graduation, must complete a professional nursing curriculum in order to be eligible to retake the examination.}~~

~~(d) [(3)]~~ An applicant who has not passed the NCLEX-RN® within four years from the date of completion of requirements for graduation must complete a professional nursing program in order to take or retake the examination.

~~(e) [(4)]~~ Upon initial licensure by examination, the license is issued for a period ranging from six months to 29 months depending on the birth date. Licensees born in even numbered years shall renew their license in even numbered years; licensees born in odd numbered years shall renew their licenses in odd numbered years.

§217.4. Requirements for Initial Licensure by Examination for Nurses Who Graduate from Professional Nursing Programs Outside of United States' Jurisdictions.

(a) An applicant for initial licensure applying under this section must:

(1) provide a Commission on Graduates of Foreign Nursing Schools (CGFNS) certificate, or a CGFNS Credential Evaluation Service Full Education Course-by-Course Report and an English proficiency test acceptable to the Board, or the equivalent which verifies that the applicant:

(A) has the educational credentials equivalent to graduation from a governmentally accredited/approved, post-secondary general nursing program of at least two academic years in length;

(B) received both theory and clinical education in each of the following: nursing care of the adult which includes both medical and surgical nursing, maternal/infant nursing, nursing care of children, and psychiatric/mental health nursing;

(C) received initial registration/license as a first-level, general nurse in the country where the applicant completed general nursing education;

(D) is currently registered/licensed as a first-level general nurse;

(E) demonstrated proficiency in the English language; and

(F) passed the CGFNS Qualifying Exam, if submitting a CGFNS certificate;

(2) file a complete, notarized application for registration containing data required by the board and the required application processing fee which is not refundable; and

(3) pass the NCLEX-RN® as a Texas applicant;

(A) within four years of completion of the requirements for graduation from the nursing program if the applicant has not practiced as a first level general nurse [professional registered nurse at least two of the four years] since completing the requirements for graduation; or

(B) within four years of the date of eligibility for the NCLEX-RN® if the applicant has practiced as a first level general nurse [professional registered nurse] at least two [of the past four] years since completing the requirements for graduation.

~~(b) An applicant who has completed the requirements for graduation and has practiced as a first level general nurse for at least two years but has not practiced as a first level general nurse within the four years immediately preceding the filing of an application for initial licensure will be issued a six month temporary permit upon passing the NCLEX-RN® examination and must complete a nurse refresher course that meets the criteria defined by the Board in order to be eligible for licensure under this section. [An applicant who fails the NCLEX-RN® may retake the examination no more than two times without additional education.]~~

~~(c) [(4)]~~ An applicant who has not passed the NCLEX-RN® [is unsuccessful after three attempts and] within four years of completion of the requirements for graduation or within four years of the date of eligibility must complete a professional nursing program ~~[curriculum]~~ in order to be eligible to take or retake the examination.

~~{(2) An applicant who has not passed the NCLEX-RN® within four years of completion of the requirements for graduation or within four years of the date of eligibility must complete a professional nursing program in order to be eligible to take the examination.}~~

~~{(c) An applicant who graduated more than four years prior to the date of filing an application and who has not practiced as a professional registered nurse two of the past four years must complete a professional nursing program in order to be eligible for licensure under this section.}~~

(d) Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue settled by way of a Petition for Declaratory Order, (see §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure) and Texas Occupations Code §301.257 relating to Declaratory Order of License Eligibility [Texas Civil Statutes, Article 4519a]) then the application will be treated and processed as a Petition for Declaratory Order and the applicant will be required to pay the appropriate non-refundable processing fees. Should the Board finally determine that the individual is not eligible to be admitted to the examination, then that individual is precluded from again petitioning, or applying to the Board for admission to the examination except when the impediment to eligibility for licensure has been removed. In no event, may an applicant repetition for a declaratory order before the first anniversary of the date of the Board's determination to deny eligibility. Any subsequent petition must be made in the manner and form the Board requires. [; such as when an applicant receives a full and unconditional pardon for prior criminal convictions.]

(e) Upon initial licensure by examination, the license is issued for a period ranging from six months to 29 months depending on the birth date. Licensees born in even numbered years shall renew their licenses in even-numbered years; licensees born in odd-numbered years shall renew their licenses in odd-numbered years.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Katherine Thomas

Executive Director

Board of Nurse Examiners

Earliest possible date of adoption: June 15, 2003

For further information, please call: (512) 305-6823



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 30. OCCUPATIONAL LICENSES AND REGISTRATIONS

SUBCHAPTER G. ON-SITE SEWAGE FACILITIES INSTALLERS, APPRENTICES, DESIGNATED REPRESENTATIVES, AND SITE EVALUATORS

30 TAC §§30.237, 30.240, 30.242, 30.244, 30.246

The Texas Commission on Environmental Quality (commission) proposes amendments to §§30.237, 30.240, 30.242, 30.244, and 30.246.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Senate Bill (SB) 405, 77th Legislature, 2001, established the Texas Board of Professional Geoscientists and the regulation of professional geoscientists. The commission has determined that individuals licensed as professional geoscientists in the soil science discipline are appropriate to perform site evaluations due to their educational and experience background in classifying soils. Therefore, the commission is proposing amendments to add individuals licensed as professional geoscientists in the soil science discipline to the list of individuals who can obtain a site evaluator license, if all of the other requirements for the site evaluator license are met.

The commission is proposing amendments to delete all of the definitions in §30.237 since the definitions are provided in 30 TAC Chapter 285, On-Site Sewage Facilities, and are duplications. Additionally, the proposed rules delete experience requirements for obtaining Installer II and site evaluator licenses. The commission has determined that otherwise qualified individuals have not been able to obtain an Installer II or site evaluator license because they have been unable to obtain the experience currently required. The proposed rules also provide consistency with language in other agency rules. Further, the current rules provide for staggered licensing dates. Since currently licensed individuals are now on a staggered renewal system and all new licensees will be on the staggered system, the proposed rules delete licensing requirements that are no longer applicable. Finally, the proposed rules make minor corrections in the language.

SECTION BY SECTION DISCUSSION

Throughout the sections, administrative changes are proposed in accordance with *Texas Register* requirements and to be consistent with other agency rules.

Proposed §30.237, Definitions, would delete all definitions in this section because they are duplicative of definitions in Chapter 285. To provide a reference to the definitions, language has been added that indicates that all words and terms used in the subchapter have the same meanings in the definitions given in Chapter 285.

Proposed §30.240(b)(2) and (5) would delete all requirements for experience to obtain an Installer II license. In many areas of the state, an individual seeking to obtain experience cannot get jobs to install systems allowed under the Installer I license since standard on-site sewage facilities (OSSF) are not installed due to soil and site conditions. In addition, many individuals have reported that no one will hire them to be an apprentice due to possible competition in the future. Finally, the process of verifying experience has become a resource and administrative issue. It has taken a considerable amount of time for agency staff to verify experience. To ensure that Installer IIs who do not have the experience currently required are adequately trained, the commission proposes to change the Installer II basic training course and examination. The training will be revised as necessary to meet the job task's requirements for Installer II. The examination will be changed as necessary to test the individual in the knowledge of that training. The commission has determined that the emphasis on training and testing of that training along with the training provided by the manufacturers of proprietary systems and designers of nonstandard systems will provide individuals with a greater ability to meet the job tasks required for individuals with an Installer II license than experience on only one type of system. Existing paragraphs (3) and (4) are proposed to be renumbered as new paragraphs (2) and (3). New proposed paragraph (2) adds the word "and" at the end of the phrase.

Proposed §30.240(d)(2)(C) adds a professional geoscientist license to the list of licenses, any of which would allow an individual to obtain a site evaluator license. The language is proposed to include individuals who are licensed by the Texas Board of Professional Geoscientists to practice geoscience in the soil science discipline. The commission has determined that individuals who will be licensed as professional geoscientists in the soil science discipline have the educational background and the practical experience to perform site evaluations. Therefore, the commission is proposing to add these licenses to the list of licenses in this subparagraph. The subparagraph is also proposed to be amended by deleting the certified professional soil scientist certificate from the list of licenses that an individual can have to obtain a site evaluator license. Additionally, it is no longer appropriate to include the professional soil scientist certificate as one of the prerequisites that an individual needs to obtain a site evaluator license, since any individual holding such a certificate is no longer eligible to practice soil science in Texas unless the individual holds a professional geoscientist license.

Existing §30.240(d)(2)(D) is proposed to be deleted. The requirement in the existing rule for two years of experience under another license is keeping individuals from being able to obtain the license even though the individuals have the sufficient experience. In addition, the process of verifying experience has become a resource and administrative issue. It has taken a considerable amount of time for agency staff to verify experience. To ensure that site evaluators who do not have the experience

currently required are adequately trained, the commission proposes to change the site evaluator basic training course and examination. The training is currently being revised as necessary to meet the job tasks requirements for site evaluations. The examination will be changed as necessary to test the individual in the knowledge of that training. The commission has determined that the emphasis on training and testing of that training along with the training necessary to obtain another license will provide individuals with a greater ability to meet the job tasks required for individuals with a site evaluator license than will experience.

Proposed §30.242(a) adds the "site evaluator license" to the list of licenses that are required to be renewed. This will include all of the OSSF licenses. The date of "January 1, 2002," has been deleted. Proposed §30.242(a)(1) changes "Chapter" to "chapter" for consistency. Proposed §30.242(a)(2) adds, "For an individual with a current site evaluator license that expires before August 1, 2004, the individual must have completed a minimum of eight hours of approved continuing education." This language is necessary to address individuals who have been issued an initial site evaluator license for one year or more but less than two years. All of these licenses will expire before August 1, 2004. Proposed §30.242(b) corrects an incorrect citation because the currently referenced citation does not exist.

Proposed §30.244(c) changes the language from "An individual holding a current professional engineer license is not required to possess a site evaluator license" to "A professional engineer may perform site evaluations without obtaining a site evaluator license." The change is necessary for the language in this subsection to be consistent with the definition of site evaluator in §285.2(67).

Existing §30.246(a) is proposed to be deleted since the requirements expired on September 1, 2002, thus they are no longer applicable.

Existing §30.246(b) is relettered to proposed new §30.246(a). Some language from existing §30.246(c), has been combined with the language of this subsection. Individuals who either previously had a site evaluator license, or who had taken the site evaluator training class and passed the examination are required to submit the same materials. Currently, the two types of individuals are addressed in separate subsections. Therefore, combining the two subsections will avoid duplication. The word "the" has been proposed to be changed to "an" before the word "application" to agree with the context of the sentence. Language is proposed to be added after the first sentence which states, "before September 1, 2003" to set a specific date for the submission of the required materials. A new sentence is proposed to be added to provide the requirements for obtaining a site evaluator license if the individual fails to submit the required materials before September 1, 2003. A specific end date is necessary to ensure that individuals obtaining the license are current on the site evaluator training and the OSSF rules since the site evaluation is one of the most important parts of the process of ensuring that the proper system is installed.

Existing §30.246(b)(1), (2), and (c) are proposed to be deleted since the requirements are no longer applicable.

Existing §30.246(d) is relettered to proposed new §30.246(b).

Existing §30.246(e) is relettered as proposed new §30.246(c) and changes the language in the first sentence from "An individual holding a current professional engineer license is not required to possess a site evaluator license" to "A professional engineer may perform site evaluations without obtaining a site evaluator license." The change is necessary for the language in this subsection to be consistent with the definition of site evaluator in §285.2(67) and language in other subsections of the subchapter. The language in the second sentence of this subsection is proposed to be changed from "However, an individual who holds a current professional engineer license may obtain a site evaluator license by complying with the requirements in this subchapter" to "However, a professional engineer may obtain a site evaluator license by complying with the requirements in this subchapter." This change is necessary to provide consistency in the subsection.

FISCAL NOTE

Doretta Conrad, Analyst in the Budget and Planning Division, has determined that, for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for the agency or any other unit of state government as a result of administration or enforcement of the proposed rules. There will be no fiscal impact to the agency because agency staff are not issued site evaluator licenses.

Ms. Conrad also determined that, for each of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed rules will be potentially improved environmental performance by persons regulated by the agency. It is anticipated the public benefit from site evaluations and installations of OSSFs will be enhanced as individuals licensed under these rules would potentially receive their licenses sooner and, as such, enter into a business for performing site evaluations and installations offering the public more choices at potentially lower costs. The proposed rules might impact other state agencies or local governments with staff geoscientists who need to become licensed under these rules. The fees associated with obtaining the professional geoscientist license is \$200 to cover the application and first-year license, and \$150 per year after the first year. No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed rules. Additionally, no significant fiscal implications are anticipated for any small or micro-business due to implementation of the proposed rules. The commission has determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the proposed rules is to establish regulations allowing for the public practice of geoscience in agency

procedures in conformance with the Act. The Act requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by a state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. Additionally, the proposed rules would delete experience requirements for obtaining Installer II and site evaluator licenses and delete requirements that have expired and are no longer applicable. The proposed rules are not specifically intended to protect the environment or reduce risks to human health. The proposed rules are intended to allow licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists to obtain a site evaluator license, provided they meet the other requirements for a site evaluator. Additionally, the proposed rules will delete experience requirements for obtaining Installer II and site evaluator licenses. Therefore, it is not anticipated that the proposed rules will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that these proposed rules do not meet the definition of major environmental rule.

Furthermore, even if the proposed rulemaking did meet the definition of a major environmental rule, the amendments are not subject to Texas Government Code, §2001.0225, because they do not accomplish any of the four results specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed amendments to Chapter 30 do not meet any of these requirements. First, there are no federal standards that these proposed rules would exceed. Second, the proposed rules do not exceed an express requirement of state law. Third, there is no delegation agreement that would be exceeded by these proposed rules. Fourth, the commission proposes these rules to allow for the public practice of geoscience in agency procedures in conformance with the Act. Therefore, the commission does not propose the adoption of the rules solely under the commission's general powers.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007. The specific intent of the proposed rules is to allow individuals licensed as professional geoscientists by the State of Texas, to become site evaluators, provided the individuals meet the other requirements for a site evaluator. Additionally, the proposed rulemaking would delete experience requirements for obtaining Installer II and site evaluator licenses and delete requirements that are no longer applicable.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property by burdening private real property, nor restricting or limiting a landowner's right to property, or reducing the value of property by 25% or more beyond that which would otherwise exist in the absence of the proposed rulemaking. These rules simply would allow individuals licensed as professional geoscientists by the State of Texas, to become site evaluators, provided the individuals meet the other requirements for a site evaluator; delete experience requirements for obtaining Installer II and site evaluator licenses; and delete requirements that are no longer applicable. These proposed rules do not affect any private real property.

There are no burdens imposed on private real property, and the benefits to society are better applications for environmental permits based upon reliable reports and data submitted by qualified licensed professional geoscientists.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or will affect an action and/or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6), and will therefore require that applicable goals and policies of the CMP be considered during the rulemaking process. The commission has prepared a consistency determination for the proposed rules under 31 TAC §505.22 and found that the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rule include the construction and operation of solid waste treatment, storage, and disposal facilities and the discharge of municipal and industrial wastewater to coastal waters. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies do not govern or authorize any actions subject to the CMP. The proposed rulemaking would allow individuals licensed as professional geoscientists by the State of Texas, to become site evaluators, provided the individuals meet the requirements for a site evaluator. The proposed rulemaking would also delete experience requirements for obtaining Installer II and site evaluator licenses and delete requirements that have expired and are no longer applicable. The commission invites public comment on the consistency determination of the proposed rules.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on June 3, 2003 at 10:00 a.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2003-009-030-WT. Comments must be received by 5:00 p.m., June 16, 2003. For further information, please contact Michael Bame, Regulation Development Section, at (512) 239-5658.

STATUTORY AUTHORITY

The amendments are proposed under the authority granted to the commission by the Texas Legislature in Texas Water Code (TWC), Chapter 37 and THSC, Chapter 366. The amendments are also proposed under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(14)(b); TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC; and Texas Civil Statutes, Article 3271b, the Texas Geoscience Practice Act (the Act), which authorizes the public practice of geoscience in the State of Texas.

The proposed amendments implement TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§30.237. Definitions.

The words and terms used in this subchapter shall have the same meanings as the definitions in Chapter 285 of this title (relating to On-Site Sewage Facilities). [The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.]

{(1) Alter—To change an on-site sewage facility (OSSF) resulting in:}

{(A) an increase in the volume of permitted flow;}

{(B) a change in the nature of permitted influent;}

{(C) a change from the planning materials approved by the permitting authority;}

{(D) a change in construction; or}

{(E) an increase, lengthening, or expansion of the treatment or disposal system.}

{(2) Apprentice—An individual who has been properly registered with the executive director according to this chapter, and is undertaking a training program under the direct supervision of a licensed installer.}

{(3) Authorized agent—A local governmental entity that has been delegated the authority by the executive director to implement and enforce the rules adopted under Texas Health and Safety Code, Chapter 366.}

{(4) Construct—To engage in any activity related to the installation, alteration, extension, or repair of an OSSF, including all activities from disturbing the soils through connecting the system to the

building or property served by the OSSF. Activities relating to a site evaluation are not considered construction.}

{(5) Designated representative—An individual who holds a valid license issued by the executive director according to this chapter, and who is designated by the authorized agent to review permit applications, site evaluations, or planning materials, or conduct inspections on OSSFs.}

{(6) Extend—To alter an OSSF resulting in an increase in capacity, lengthening, or expansion of the existing treatment or disposal system.}

{(7) Install—To put in place or construct any portion of an OSSF.}

{(8) Installer—An individual who is compensated by another to construct an OSSF.}

{(9) Repair—To replace any components of an OSSF in situations not included under emergency repairs according to §285.35 of this title (relating to Emergency Repairs), excluding maintenance. The replacement of tanks or drainfields is considered a repair and requires a permit for the entire OSSF system.}

{(10) Site evaluator—An individual who holds a valid license issued by the executive director according to this chapter and who conducts preconstruction site evaluations, including visiting a site and performing soil analysis, a site survey, or other activities necessary to determine the suitability of a site for an OSSF. A professional engineer may perform site evaluations without obtaining a site evaluator license.}

§30.240. Qualifications for Initial License.

(a) (No change.)

(b) To obtain an Installer II license, an individual must have:

(1) (No change.)

{(2) met one of the following requirements:}

{(A) held an Installer I license for at least one year;}

{(B) held an Installer I license for six months and possessed an apprentice registration for at least one year before June 13, 2001;}

{(C) held an apprentice registration for at least two years; or}

{(D) previously possessed an Installer II license;}

(2) [(3)] completed the Installer II basic training course; and

(3) [(4)] passed the Installer II examination. [; and]

{(5) met the experience requirements. Applicants for an Installer II license must submit statements attesting to the individual's work experience. Such statements shall include a description of the type of on-site sewage facility (OSSF) work that was performed by the individual and the physical addresses where the activity occurred. The experience shall be actual work accomplished under the license or registration. The number of systems will not substitute for the time required. Experience requirements are:}

{(A) verified experience as an Installer I. The individual shall submit either:}

{(i) sworn statements from at least three individuals for whom the applicant performed construction services; statements cannot be provided by individuals related to the applicant or applicant's

spouse, such as a child, grandchild, parent, sister, brother, or grandparent;]

[(ii)] a sworn statement from a designated representative who has approved a minimum of three installations performed by the individual; or]

[(iii)] other documentation of the individual's work experience; approved by the executive director;]

[(B)] verified experience as an apprentice. An individual shall submit either:]

[(i)] a sworn statement from the installer for whom the individual performed construction services;]

[(ii)] a sworn statement from a designated representative who witnessed the individual working on at least six OSSF installations; or]

[(iii)] other documentation of the applicant's work experience; approved by the executive director.}]

(c) (No change.)

(d) To obtain a site evaluator license, an individual must have:

(1) (No change.)

(2) met the following requirements:

(A)-(B) (No change.)

(C) possess a current Installer II license, designated representative license, professional engineer license, professional sanitarian license, or professional geoscientist license in the soil science discipline (an individual who maintains a current license through the Texas Board of Professional Geoscientists according to the requirements for professional practice). [or a certified professional soil scientist certificate; and]

[(D)] have at least two years of verified experience as an Installer II, designated representative, professional engineer, certified professional soil scientist, or professional sanitarian. Applicants for a site evaluator license must submit statements attesting to the individual's OSSF work experience. The statements shall include a description of the type of OSSF work that was performed by the individual and the physical addresses where the activity occurred or for where the activity was proposed. The experience shall be actual work accomplished under the license specified in subparagraph (C) of this paragraph during the time frames required. The number of systems will not substitute for the time required. The statements must be:]

[(i)] sworn statements from at least six individuals for whom the applicant performed OSSF services. Statements cannot be provided by individuals related to the applicant or applicant's spouse, such as a child, grandchild, parent, sister, brother, or grandparent;]

[(ii)] a sworn statement from a designated representative who has approved a minimum of six installations performed by the individual, reviewed six site evaluations performed by the individual before September 1, 2002; or approved six sets of planning materials submitted by the individual; or]

[(iii)] other documentation of the individual's work experience; approved by the executive director.}]

§30.242. Qualifications for License Renewal.

(a) To renew an Installer I, Installer II, [or] designated representative, or site evaluator license[, issued after January 1, 2002], an individual must have:

(1) met the requirements in Subchapter A of this chapter [Chapter] (relating to Administration of Occupational Licenses and Registrations); and

(2) completed a minimum of 16 hours of approved continuing education. For an individual with a current site evaluator license that expires before August 1, 2004, the individual must have completed a minimum of eight hours of approved continuing education.

(b) In addition to the requirements in subsection (a) of this section, an individual renewing a license for site evaluator shall demonstrate possession of a [the] current license specified in §30.240(d)(2)(C) [§30.240(d)(4)(C)] of this title (relating to Qualifications for Initial License).

§30.244. Exemptions.

(a)-(b) (No change.)

(c) A [An individual holding a current] professional engineer may perform site evaluations without obtaining [license is not required to possess] a site evaluator license.

§30.246. Application for Site Evaluator.

[(a)] The executive director shall mail an application to the most recent address provided to the executive director at least 60 days before September 1, 2002; to:]

[(1)] all individuals who have previously held a site evaluator license; and]

[(2)] all individuals who have previously taken the site evaluator basic training course and passed the site evaluator examination; but did not hold a site evaluator license.}]

[(a)] *[(b)]* An individual who previously held a site evaluator license, or has previously taken the site evaluator basic training course and passed the site evaluator examination, but did not hold a site evaluator license, shall submit an [the] application, application fee, and documentation of a current license specified in §30.240(d)(2)(C) of this title (relating to Qualifications for Initial License) before September 1, 2003. After that date the individual must submit a new application with the appropriate fee and pass the examination. [The application shall be processed as follows:]

[(1)] Licenses with odd license numbers shall be for a term of one year or less and shall have an expiration date of the last day of the month the license was first issued. The application fee shall be prorated if the term is less than one year.}]

[(A)] To renew at the time of the first renewal, the individual must have:]

[(i)] met the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations);]

[(ii)] demonstrated completion of at least eight hours of approved continuing education training; and]

[(iii)] demonstrated possession of a current license as required in §30.240(d)(4)(C) of this title.}]

[(B)] If the individual meets the requirements in subparagraph (A) of this paragraph, the license will be renewed for two years according to the requirements of §30.242 of this title (relating to Qualifications for License Renewal).}]

[(2)] Licenses with even license numbers shall be for a term of up to two years, but more than one year, and shall have an expiration date of the last day of the month of the first issue date. The application

fee shall be prorated if the term is less than two years. At each subsequent renewal, the individual must meet the requirements in §30.242 of this title.]

{(c) An individual who has previously taken the site evaluator basic training course and passed the site evaluator examination; but did not hold a site evaluator license, shall submit the application, the required statements for experience, the application fee, and must hold the current license specified in §30.240(d)(2)(C) of this title.]

{(1) If the individual meets the qualifications of §30.240(d)(4) of this title, the license will be issued for a term of up to two years, but more than one year, and shall have an expiration date of the last day of the month of the date the site evaluator examination was passed.]

{(2) The application fee shall be prorated if the term is less than two years.]

{(3) The license shall be renewed for two years according to the requirements in §30.242 of this title.]

(b) [(d)] An individual who begins the process to become eligible for a site evaluator license after September 1, 2003 [2002], shall meet the requirements of §30.240(d)(2) of this title.

(c) [(e)] A [An individual holding a current] professional engineer may perform site evaluations without obtaining [license is not required to possess] a site evaluator license [to perform site evaluations]. However, a [an individual who holds a current] professional engineer [license] may obtain a site evaluator license by complying with the requirements in this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302733

Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: June 15, 2003

For further information, please call: (512) 239-0348



CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

The Texas Commission on Environmental Quality (commission) proposes amendments to Subchapter A, Definitions, §115.10; Subchapter C, Volatile Organic Compound Transfer Operations, §115.216 and §115.217; Subchapter D, Petroleum Refining, Natural Gas Processing, and Petrochemical Processes, §§115.352, 115.354, 115.357, and 115.359; and Subchapter H, Highly-Reactive Volatile Organic Compounds, §§115.722, 115.725 - 115.727, 115.729, 115.764, 115.767, 115.781, 115.783, 115.785, 115.787, and 115.789. These amended sections and corresponding revisions to the state implementation plan (SIP) will be submitted to the United States Environmental Protection Agency (EPA).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission proposes these amendments to Chapter 115, Control of Air Pollution from Volatile Organic Compounds, and revisions to the SIP in order to make a variety of changes which correct typographical errors, update cross-references, add flexibility, and amend requirements to achieve the intended volatile organic compound (VOC) emission reductions of the program.

SECTION BY SECTION DISCUSSION

Subchapter A, Definitions

The proposed amendments to §115.10, Definitions, revise the definition of "Highly-reactive volatile organic compound (HRVOC)" to specify that isobutene (2-methylpropene or isobutylene) is one of the isomers of butene. This revision is necessary to eliminate the possibility of confusion about which compounds are included as isomers of butene and because owners and operators might otherwise design their monitoring and testing plans to exclude isobutene, thereby increasing costs due to the additional speciation which would be necessary to exclude isobutene. The proposed revision is consistent with the intended scope of the definition of HRVOC, the modeling which was the basis for this definition, and the associated Chapter 115, Subchapter H, HRVOC rules which were adopted on December 13, 2002 and published in the January 3, 2003 issue of the *Texas Register* (28 TexReg 113).

Subchapter C, Volatile Organic Compound Transfer Operations

Division 1, Loading and Unloading of Volatile Organic Compounds

The proposed amendments to §115.216, Monitoring and Recordkeeping Requirements, revise §115.216(3)(B) to specify that vapor pressure records are not required if the total volume of VOC loaded into transport vessels is less than 20,000 gallons per day (averaged over each consecutive 30-day period). This revision is proposed because vapor pressure records are not necessary to establish compliance with the 20,000 gallon per day exemption threshold at loading operations for which the total volume of VOC loaded into transport vessels is less than 20,000 gallons per day. In addition, the proposed amendments spell out and acronym "pounds per square inch, absolute (psia)" in §115.216(3)(C).

The proposed amendments to §115.217, Exemptions, revise §115.217(a)(1) and (b)(1) by adding "to or from transport vessels" to indicate that VOC transfer includes both loading and unloading operations to or from transport vessels. The proposed amendments to §115.217 also revise §115.217(a)(2)(A) and (b)(3)(A) by replacing "any plant" with "loading operations at any plant" because these exemptions are more appropriately associated with loading operations at the plant, rather than the plant itself. In addition, the proposed amendments to §115.217 revise §115.217(a)(2)(A) and (B), (3), (4), and (5)(A); and (b)(1), (2), (3)(A) and (B), and (4) - (6), by deleting unnecessary division title references.

Subchapter D, Petroleum Refining, Natural Gas Processing, and Petrochemical Processes

Division 3, Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas

The proposed amendments to §115.352, Control Requirements, revise §115.352(2) by replacing the word "monitored" with "inspected." This revision is necessary to ensure that §115.352(2) is not incorrectly interpreted to require the use of monitoring (with

a hydrocarbon gas analyzer) to determine whether a successful repair was made to a component in heavy liquid service. Section 115.357(1) allows owners and operators to implement audio/visual/olfactory inspections on components in heavy liquid service in lieu of monitoring (with a hydrocarbon gas analyzer). Logically, the same methodology should be used after a component repair attempt as during the routinely scheduled monitoring or inspection on that component.

The proposed amendments to §115.352(2)(A)(ii) correct cross-references to subclause (IV).

The proposed amendments to §115.352 also revise §115.352(2)(D) by adding the phrase "without use of extraordinary efforts." This revision is necessary to ensure that §115.352(2)(D) is not incorrectly interpreted to require the use of extraordinary efforts, such as sealant injection, before placing a valve on the shutdown list under Subchapter D, Division 3.

In addition, the proposed amendments to §115.352 revise §115.352(2)(E) by adding language to correct an existing requirement which inadvertently requires monitoring (with a hydrocarbon gas analyzer) of components in heavy liquid service for which a repair attempt was made during a shutdown. This revision is necessary because §115.357(1) allows owners and operators to implement audio/visual/olfactory inspections on components in heavy liquid service in lieu of monitoring (with a hydrocarbon gas analyzer).

Finally, the proposed amendments to §115.352 revise §115.352(2)(E) to specify that components for which a repair attempt was made during a shutdown must be monitored (with a hydrocarbon gas analyzer) and inspected for leaks within 30 days after startup is completed following the shutdown. Currently, such monitoring and inspection is required within 30 days or at the next monitoring period, whichever occurs first, after startup is completed following the shutdown. The proposed revision will address the scenario in which a unit has a start-up with only a few days left in the monitoring period, but will continue to ensure that components for which a repair attempt was made during a shutdown are monitored shortly after startup.

The proposed amendments to §115.354, Inspection Requirements, revise §115.354(10)(A) by replacing "the time of monitoring (beginning and end)" with "the time of monitoring (i.e., the time that the organic vapor analyzer trigger is pulled to record the concentration of each component)." This revision is necessary because recording of a single time for each component, rather than the start and stop times, is available with current software. The intent of the proposed language is to require a recording of the time that the organic vapor analyzer trigger is pulled to record the concentration of each component, thereby allowing auditors to determine pace anomalies.

The proposed amendments to §115.354 also revise §115.354(10)(C) by adding language which specifies that notations of database changes include changes to the monitored concentration, addition or deletion of components, or monitoring schedule. This revision is necessary because the current §115.354(10)(C) could be interpreted to require a notation of changes which are not needed to demonstrate compliance (for example, a more accurate description of a component's location).

The proposed amendment to §115.357, Exemptions, revises §115.357(7) by replacing the incorrect term "facilities" with

"plant sites covered by a single account number." This is consistent with the intended scope of this exemption as previously identified in the January 3, 2003 issue of the *Texas Register* (28 TexReg 153) and documentation for the 1993 rulemaking in which this exemption was added. The acronym "HRVOC" in §114.357(10) is also spelled out as highly-reactive volatile organic compound because it is only used once in the section.

The proposed amendments to §115.359, Counties and Compliance Schedules, revise the compliance date in §115.359(2) and (3) from December 31, 2003 to March 31, 2004 in order to provide more time for the regulated community to comply and also revise a reference in §115.359(3) from "appropriate regional office" to "executive director."

Subchapter H, Highly-Reactive Volatile Organic Compounds

Division 1, Vent Gas Control

The proposed amendments to §115.722, Site-wide Cap and Control Requirements, revise §115.722(b) by replacing the phrase "comply with" with the phrase "meet the requirements of" because the current language may be interpreted as requiring direct compliance with selected provisions of 40 Code of Federal Regulations (CFR) §60.18. This amendment is intended to update the language that incorporates the requirements of that section without implying that the rule establishes an independent requirement to comply with that federal rule. The acronyms "VOC" and "DERC" are deleted because the terms volatile organic compound and discrete emission reduction credit are used only once in the section.

The proposed amendments to §115.725, Monitoring and Testing Requirements, revise §115.725(a) by replacing the term "actual and expected" with the term "maximum potential." This correction is also made in §115.725(c). Additionally, new language is added to the end of §115.725(a) to allow the use of facility process knowledge to supplement actual testing when necessary.

The proposed amendments to §115.725(c) expand the acceptable period to develop test data by referencing testing which was conducted before "approval of the test plan" and removing the existing language that specifies a deadline of "December 31, 2002." Supplemental language is added to further define the acceptability and validity of the test data by requiring that the owner or operator notify the appropriate regional office at least 45 days prior to testing to provide the appropriate regional office with an opportunity to observe the testing. In addition, a reference to submit the data to the "Engineering Services Team" has been changed to "executive director."

The term "pre-approved" is replaced with the term "approved" in §115.725(d)(8) to provide the executive director with more latitude in accepting modified monitoring methods. In addition, the commission solicits comments on what degree of flexibility may be needed in §115.725(d). Specifically, the commission solicits comments on the testing necessary for vent gas streams controlled by flares, the specific constituents other than HRVOC for which monitoring is required, direct measurement of British thermal units (Btu) in lieu of Btu calculations from component properties, and adjustments to the accuracy requirements for meters.

The rule language in §115.725(e)(2)(C) is corrected to better define that the material loaded immediately previous to the current loading operation refers to the material in the transport vessel by adding the phrase "into the vessel."

The proposed amendments to §115.726, Recordkeeping and Reporting Requirements, revise §115.726(a) by specifying where test plans and quality assurance plans must be submitted. In addition, new §115.726(a)(1)(C) and (2)(C) define the turnaround time for quality assurance plans and test plans submitted to the commission. This language is aimed at encouraging the timely submittal of quality assurance plans and test plans. Specifically, the new §115.726(a)(1)(C) is being proposed at industry's request so that the affected owners and operators will have the assurance that they can send in their quality assurance plans early (allowing time for the agency to review the plans) and have sufficient time to purchase and begin monitoring by December 31, 2004 after the agency's review. However, if an owner or operator elects to wait to submit a plan until April 30, 2004 and is issued a deficiency letter on day 180, there will be no relief for failure to implement the required monitoring by December 31, 2004. In addition, the owner or operator must submit a corrected quality assurance plan within 60 days of the date of any deficiency and/or additional requirements letter. If an approval or detailed deficiency and/or directed additional requirements letter is not issued within 180 days of receipt by the executive director, then the quality assurance plan is approved by default.

Similarly, the new §115.726(a)(2)(C) is being proposed so that the affected owners and operators will have the assurance that they can send in their test plans early (allowing time for the agency to review the plans) and have sufficient time to conduct testing by December 31, 2004 after the agency's review. However, if an owner or operator elects to wait to submit a plan until April 30, 2004 and is issued a deficiency letter on day 45, there will be no relief for failure to implement the required testing by December 31, 2004. In addition, the owner or operator must submit a corrected test plan within 15 days of the date of any deficiency and/or additional requirements letter. If an approved or detailed deficiency and/or additional requirements letter is not issued within 45 days of receipt by the executive director, then the test plan is approved by default, provided the testing is to be conducted in accordance with the appropriate reference methods and procedures specified in §115.125 (Testing Requirements) without deviation.

Also, §115.726(c) is amended to specify that an owner or operator does not necessarily need to be subject to both §115.722 and §115.725(d) or (e) in order to comply with the recordkeeping requirements of this section. Therefore, the word "and" is being replaced by "or."

The recordkeeping requirements in §115.726(c)(5) are already addressed in §115.726(f), so this duplicative language is proposed for deletion. In addition, §115.726(f) is being revised with a phrase added to specify that the owner or operator is to maintain not only records required in this section, but also other records as necessary to demonstrate continuous compliance.

Finally, the proposed amendments to §115.726 add a new §115.726(d)(3), which requires the owners or operators of vent gas streams and flares that have no potential to emit HRVOC to maintain records demonstrating that they have no potential to emit HRVOC.

The proposed amendments to §115.727, Exemptions, revise §115.727(a) by acronyming the term parts per million by volume as "ppmv" and deleting inadvertent references to §115.726(d) and (f). The recordkeeping specified in §115.726(d) and (f) is necessary in order to demonstrate compliance with §115.727(a).

The proposed amendments to §115.727 also revise §115.727(b) by adding a section title which is necessary due to the proposed revisions to §115.727(a) described in the previous paragraph.

In addition, the proposed amendments to §115.727 add new §115.727(e)(1) and (f) for vent gas streams and flares, respectively, that have no potential to emit HRVOC. The proposed amendments to §115.727 also add new §115.727(e)(2) for a vent gas stream that has an HRVOC concentration less than 100 parts per million by volume at all times, provided that the total maximum potential HRVOC emissions for all vent gas streams exempted under §115.727(e)(2) is less than 5.0% of the HRVOC cap for the account specified in §115.722(a). In addition, the proposed amendments to §115.727 add new §115.727(3), which exempts pressure tanks, laboratory vent hoods, instrumentation air systems, and a variety of combustion sources. The proposed new exemptions are appropriate in order to exclude sources for which monitoring and testing for HRVOC would be impractical due to the owner's or operator's certainty that HRVOCs would be present in low concentrations or would not be present at any time. Vent gas streams and the streams to flares must have no detectable amount of any HRVOCs by any currently available methods of detection for the HRVOCs to be considered exempt under §115.727(e)(1) or (f). Extremely low concentrations of HRVOCs can be detected, so the commission is specifically seeking detailed comments on setting an appropriate level for allowing exemption from testing or monitoring.

The proposed amendments to §115.729, Counties and Compliance Schedules, revise the compliance date in §115.729(1)(A) from June 30, 2004 to December 31, 2004 in order to provide more time for the regulated community to comply with the testing requirements of §115.725. In addition, the proposed amendments to §115.729(1)(A) revise "executive director" to "appropriate regional office and any local air pollution control agency with jurisdiction" to specify where within the agency the testing results are to be submitted.

Subchapter H, Highly-Reactive Volatile Organic Compounds

Division 2, Cooling Tower Heat Exchange Systems

The proposed amendments to §115.764, Monitoring Requirements, revise §115.764(a)(5) and (b)(5) to specify where to sample for total strippable VOC by adding the phrase, "in the cooling tower water." In addition, the commission solicits comments on what degree of flexibility may be needed in §115.764(a) - (c). Specifically, the commission solicits comments on the specific constituents that must be determined from samples, the appropriate time allowed to determine sample content, the frequency of alternate sampling when continuous monitors are out of operation, and the executive director's approval of modifications to the monitoring requirements on a case-by-case basis.

In addition, a new §115.764(d)(3) defines the turnaround time for quality assurance plans submitted to the commission. This language is aimed at encouraging the timely submittal of quality assurance plans. Specifically, the new §115.764(d)(3) is being proposed at industry's request so that affected owners and operators will have the assurance that they can send in their plans early (allowing time for the agency to review the plans) and have sufficient time to purchase and begin monitoring by December 31, 2004 after the agency's review. However, if an owner or operator elects to wait to submit a plan until April 30, 2004 and is issued a deficiency letter on day 180, there will be no relief for failure to implement the required monitoring by December 31, 2004.

In addition, the owner or operator must submit a corrected quality assurance plan within 60 days of the date of any deficiency and/or additional requirements letter. If an approval or detailed deficiency and/or directed additional requirements letter is not issued within 180 days of receipt by the executive director, then the quality assurance plan is approved by default.

The proposed amendments to §115.764 also add new §115.764(e) which establishes an alternative to the monitoring requirements of §115.764(a)(2) - (5) and (b)(2) - (5). Specifically, in lieu of §115.764(a)(2) - (5) and (b)(2) - (5), the owner or operator of cooling tower heat exchange systems in which no individual heat exchanger has 5.0% or greater HRVOC in the process-side fluid shall determine total strippable VOC and the HRVOC concentration in the cooling tower water at least once per month, with an interval of not less than 20 days between samples, using the appropriate methods in §115.766. If the total HRVOC concentration in the cooling tower water is ten parts per billion by weight or greater, the owner or operator shall determine total strippable VOC at least daily.

Finally, the proposed amendments to §115.764 add new §115.764(f) which establishes an alternative to the continuous flow monitor requirements of §115.764(a)(1) and (b)(1). Specifically, in lieu of §115.764(a)(1) and (b)(1), the owner or operator of cooling tower heat exchange systems may use the maximum potential flow rate based on manufacturer's pump performance data, assuming no back pressure.

The proposed amendments to §115.767, Recordkeeping Requirements, add a new §115.767(d) and (e), which establish recordkeeping requirements necessary to document compliance with new §115.764(e) and (f), respectively, described in the preceding two paragraphs.

Subchapter H, Highly-Reactive Volatile Organic Compounds

Division 3, Fugitive Emissions

The proposed amendments to §115.781, General Monitoring and Inspection Requirements, revise §115.781(a) to specify that individual identification of components is not required. The acceptable methods for identifying the components of each process unit in HRVOC service are given in the existing §115.781(a)(1) - (6). The proposed revision to §115.781(a) is necessary due to the inherent difficulties associated with individually tagging all components.

The proposed amendments to §115.781 also revise §115.781(b)(4) to specify that components for which a repair attempt was made during a shutdown must be monitored (with a hydrocarbon gas analyzer) and inspected for leaks within 30 days after startup is completed following the shutdown. Currently, such monitoring and inspection is required within 30 days or at the next monitoring period, whichever occurs first, after startup is completed following the shutdown. The proposed revision will address the scenario in which a unit has a start-up with only a few days left in the monitoring period, but will continue to ensure that components for which a repair attempt was made during a shutdown are monitored shortly after startup.

In addition, the proposed amendments to §115.781 revise §115.781(b)(7) to specify that if an unsafe-to-monitor valve is not considered safe to monitor within a calendar year, it must be monitored as soon as possible during safe-to-monitor times. This revision is necessary to ensure that monitoring personnel are not unnecessarily exposed to unsafe conditions.

Finally, the proposed amendments to §115.781 revise the leak-skip option available under §115.781(f) by adding blind flanges, caps, or plugs at the end of a pipe or line containing HRVOC to the list of components eligible for the leak-skip option because these components are functionally similar to the components (i.e., connectors, bolted manways, heat exchanger heads, hatches, and sump covers), which are currently allowed to use this leak-skip option.

The proposed amendment to §115.783, Equipment Standards, revises §115.783 by adding a new §115.783(6), which specifies that except for pressure relief valves, no valves shall be installed or operated at the end of a pipe or line containing HRVOC unless the pipe or line is sealed with a second valve, a blind flange, or a tightly-fitting plug or cap. The sealing device may be removed only while a sample is being taken or during maintenance operations, and when closing the line, the upstream valve shall be closed first. This new paragraph is consistent with the existing §115.352(4) and is necessary to prevent excess fugitive emissions resulting from the opening of an open-ended valve. In addition, the proposed amendments spell out and acronym "highly-reactive volatile organic compound (HRVOC)" in §115.783(3).

The proposed amendments to §115.785, Testing Requirements, revise §115.785(3) by replacing a reference to the Engineering Services Team and the regional office with a reference to the executive director. The proposed amendments to §115.785 also revise §115.785(5) for consistency with the revisions to §115.725(c) described earlier in this preamble.

The proposed amendments to §115.787, Exemptions, revise §115.787(c)(6) to include a reference to the definition of sampling connection system in 40 CFR §63.161, and add the *Federal Register* publication date of federal regulations.

The proposed amendments to §115.789, Counties and Compliance Schedules, revise §115.789(1) to specify that the schedule in the leak-skip option of §115.781(f) applies to connectors, blind flanges, caps, or plugs at the end of a pipe or line containing HRVOC, bolted manways, heat exchanger heads, hatches, and sump covers for which the owner or operator has notified the appropriate regional office and local air pollution control program that §115.781(f) will be used to establish the monitoring schedule for these components. This revision is necessary because the monitoring schedule under the leak-skip option of §115.781(f) extends beyond the compliance schedule in §115.789(1).

In addition, the proposed amendments to §115.789 revise the compliance dates in §115.789(1), (2), (5), and (6) from December 31, 2003 to March 31, 2004 in order to provide more time for the regulated community to comply. Finally, the proposed amendments to §115.789 revise the compliance date in §115.789(4) from December 31, 2003 to December 31, 2004 in order to provide more time for the regulated community to conduct testing and for consistency with the revisions to §115.729(1) described earlier in this preamble.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Analyst with Strategic Planning and Appropriations, determined that for each year of the first five-year period the proposed rules are in effect, there will be no fiscal implications to the agency or any other unit of state or local government due to administration or enforcement of the proposed rules. The commission anticipates no fiscal implications for any other unit of state or local government to comply with the proposed rules because

none of the sources required to comply with the proposed Chapter 115 requirements are owned or operated by units of state or local government.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules would be increased compliance with air emission standards due to rules that are more understandable.

The commission estimates that approximately 140 privately-owned and operated facilities in Brazoria, Chambers, Collin, El Paso, Dallas, Denton, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties would be subject to the proposed rules.

The proposed amendments are intended to make a variety of changes which correct typographical errors, update cross-references, add flexibility, and amend requirements to achieve the intended emission reductions of the program. No fiscal implications resulting from the implementation of the proposed rules are expected.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

The commission has been unable to identify any small or micro-businesses which would be affected by the proposed rules. The majority of sites affected by the proposed rules are large petrochemical and industrial businesses. If there are affected small or micro-businesses, however, no adverse fiscal implications are anticipated for small or micro-businesses as a result of implementation of the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules would not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this proposal is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This proposal is not a major environmental rule because its primary purpose is to make a variety of changes which correct typographical errors, update cross-references, add flexibility, and amend requirements to achieve the intended emission reductions of the program.

In addition, a draft regulatory impact analysis is not required because the rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Section 2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by

federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposal does not exceed a standard set by federal law, and the proposed technical requirements are consistent with applicable federal standards. In addition, this proposal does not exceed an express requirement of state law and is not proposed solely under the general powers of the agency, but is specifically authorized by the provisions cited in the STATUTORY AUTHORITY section of this preamble. Finally, this proposal does not exceed a requirement of a delegation agreement or contract to implement a state and federal program. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to make a variety of changes which correct typographical errors, update cross-references, add flexibility, and amend requirements to achieve the intended emission reductions of the program. Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property because this proposal does not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the rules. Therefore, these rules will not constitute a takings under the Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and therefore, will require that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission determined that the proposed rulemaking action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). No new sources of air contaminants will be authorized. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 CFR, to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies. Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMIT PROGRAM

Chapter 115 is an applicable requirement under 30 TAC Chapter 122; therefore, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, revise their operating permit to include the revised

Chapter 115 requirements for each emission unit at their sites affected by the revisions to Chapter 115.

ANNOUNCEMENT OF HEARING

Public hearings on this proposal will be held in Houston on June 2, 2003, at 2:00 p.m. at the City of Houston, City Hall Annex Public Level Conference Room, located at the City Hall Annex Building, 900 Bagby, Street Level, and at 7:00 p.m. at the City of Houston, City Council Chambers, located at 901 Bagby; and in Arlington on June 4, 2003, at 2:00 p.m. at North Central Texas Council of Governments, Third Floor, Transportation Board Room, located at 616 Six Flags Drive, Suite 200. The hearings will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearings; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearings and will answer questions before and after the hearings.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2003-027-115-AI. Comments must be received by 5:00 p.m., June 4, 2003. For further information, please contact Ashley Forbes of the Strategic Assessment Division at (512) 239-0493 or Eddie Mack, also of the Strategic Assessment Division, at (512) 239-1488.

SUBCHAPTER A. DEFINITIONS

30 TAC §115.10

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA). The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.016, concerning Monitoring Requirements: Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants.

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017.

§115.10. *Definitions.*

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this chapter (relating to Control of Air Pollution from Volatile Organic Compounds), shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this chapter are found in §3.2 and §101.1 of this title (relating to Definitions).

(1) - (16) (No change.)

(17) Highly-reactive volatile organic compound (HRVOC)--As follows.

(A) In Harris County, one or more of the following VOCs: 1,3-butadiene; all isomers of butene (e.g., isobutene (2-methylpropene or isobutylene), [i.e.,] alpha-butylene (ethylethylene), and beta-butylene (dimethylethylene, including both cis- and trans-isomers)); ethylene; and propylene.

(B) (No change.)

(18) - (46) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302727

Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: June 15, 2003

For further information, please call: (512) 239-4712



SUBCHAPTER C. VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS DIVISION 1. LOADING AND UNLOADING OF VOLATILE ORGANIC COMPOUNDS

30 TAC §115.216, §115.217

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.016, concerning Monitoring Requirements: Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants.

The proposed amendments implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017.

§115.216. Monitoring and Recordkeeping Requirements.

The owner or operator of each volatile organic compound (VOC) loading or unloading operation in the covered attainment counties or in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas shall maintain the following information for at least two years at the plant, as defined by its air quality account number. The owner or operator shall make the information available upon request to representatives of the executive director, EPA, or any local air pollution control agency having jurisdiction in the area.

(1) - (2) (No change.)

(3) Land-based VOC transfer to or from transport vessels.

(A) (No change.)

(B) A record of the type and vapor pressure of each VOC transferred (excluding gasoline). Vapor pressure records are not required if the total volume of VOC loaded into transport vessels is less than 20,000 gallons per day (averaged over each consecutive 30-day period).

(C) The owner or operator of any plant, as defined by its air quality account number, at which all VOC transferred has a true vapor pressure at actual storage conditions less than 0.5 pounds per square inch, absolute (psia) [psia] as specified in §115.217(a)(1) of this title (relating to Exemptions) or 1.5 psia as specified in §115.217(b)(1) of this title, is not required to keep the records specified in subparagraph (A) of this paragraph.

(D) - (E) (No change.)

(4) (No change.)

§115.217. Exemptions.

(a) The following exemptions apply in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas.

(1) Vapor pressure (at land-based operations). All land-based loading and unloading (to or from transport vessels) of volatile organic compounds (VOC) with a true vapor pressure less than 0.5 pounds per square inch, absolute (psia) under actual storage conditions is exempt from the requirements of this division (relating to Loading and Unloading of Volatile Organic Compounds), except for:

(A) - (D) (No change.)

(2) Throughput.

(A) Loading operations at any [Any] plant, as defined by its air quality account number, excluding gasoline bulk plants, which loads less than 20,000 gallons of VOC into transport vessels per day (averaged over each consecutive 30-day period) with a true vapor pressure greater than or equal to 0.5 psia under actual storage conditions are [is] exempt from the requirements of this division [(relating to Loading and Unloading of Volatile Organic Compounds)], except for:

(i) - (iv) (No change.)

(B) Gasoline bulk plants which load less than 4,000 gallons of gasoline into transport vessels per day (averaged over each consecutive 30-day period) are exempt from the requirements of this division [(relating to Loading and Unloading of Volatile Organic Compounds)], except for:

(i) - (iii) (No change.)

(3) Liquefied petroleum gas. All loading and unloading of liquefied petroleum gas is exempt from the requirements of this division [(relating to Loading and Unloading of Volatile Organic Compounds)], except for:

(A) - (C) (No change.)

(4) Motor vehicle fuel dispensing facilities. Motor vehicle fuel dispensing facilities, as defined in §101.1 of this title (relating to Definitions), are exempt from the requirements of this division [(relating to Loading and Unloading of Volatile Organic Compounds)].

(5) Marine vessels. The following marine vessel transfer exemptions apply.

(A) The following marine vessel transfer operations are exempt from this division [(relating to Loading and Unloading of Volatile Organic Compounds)]:

(i) - (ii) (No change.)

(B) The following marine vessel transfer operations are exempt from the requirements of §§115.212(a), 115.214(a), and 115.216 of this title, except as noted:

(i) - (iv) (No change.)

(b) The following exemptions apply in the covered attainment counties.

(1) General VOCs (non-gasoline). Except in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties, all loading and unloading of VOC other than gasoline (to or from transport vessels) is exempt from the requirements of this division [(relating to Loading and Unloading of Volatile Organic Compounds)].

(2) Vapor pressure (at land-based operations). All land-based loading and unloading of VOC with a true vapor pressure less than 1.5 psia under actual storage conditions is exempt from the requirements of this division [(relating to Loading and Unloading of Volatile Organic Compounds)], except for:

(A) - (D) (No change.)

(3) Throughput.

(A) Loading operations at any [Any] plant, as defined by its air quality account number, excluding gasoline bulk plants, which loads less than 20,000 gallons of VOC into transport vessels per day (averaged over each consecutive 30-day period) with a true vapor pressure greater than or equal to 1.5 psia under actual storage conditions are [is] exempt from the requirements of this division [(relating to Loading and Unloading of Volatile Organic Compounds)], except for:

(i) - (iv) (No change.)

(B) Gasoline bulk plants which load less than 4,000 gallons of gasoline into transport vessels per day (averaged over each consecutive 30-day period) are exempt from the requirements of this division [(relating to Loading and Unloading of Volatile Organic Compounds)], except for:

(i) - (iii) (No change.)

(4) Crude oil, condensate, and liquefied petroleum gas. All loading and unloading of crude oil, condensate, and liquefied petroleum gas is exempt from the requirements of this division [(relating to Loading and Unloading of Volatile Organic Compounds)], except for:

(A) - (C) (No change.)

(5) Motor vehicle fuel dispensing facilities. Motor vehicle fuel dispensing facilities, as defined in §101.1 of this title, are exempt

from the requirements of this division [~~relating to Loading and Unloading of Volatile Organic Compounds~~].

(6) Marine vessels. All loading and unloading of marine vessels is exempt from this division [~~relating to Loading and Unloading of Volatile Organic Compounds~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-4712

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**SUBCHAPTER D. PETROLEUM REFINING,
NATURAL GAS PROCESSING, AND
PETROCHEMICAL PROCESSES
DIVISION 3. FUGITIVE EMISSION CONTROL
IN PETROLEUM REFINING, NATURAL
GAS/GASOLINE PROCESSING, AND
PETROCHEMICAL PROCESSES IN OZONE
NONATTAINMENT AREAS**

30 TAC §§115.352, 115.354, 115.357, 115.359

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA. The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.016, concerning Monitoring Requirements: Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants.

The proposed amendments implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017.

§115.352. Control Requirements.

For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions), no person shall operate a petroleum refinery; a synthetic organic chemical, polymer, resin, or methyl tert-butyl ether manufacturing process; or a natural gas/gasoline processing operation, as defined in §115.10 of this title, without complying with the following requirements.

(1) (No change.)

(2) A first attempt at repair shall be made no later than five calendar days after the leak is found and the component shall be repaired no later than 15 calendar days after the leak is found, except as provided in subparagraphs (A) - (C) of this paragraph. A component in gas/vapor or light liquid service is considered to be repaired when it is monitored with an instrument using Test Method 21 and shown to no longer have a leak after adjustments or alterations to the component. A component in heavy liquid service is considered to be repaired when it is inspected [~~monitored~~] by audio, visual, and olfactory means and shown to no longer have a leak after adjustments or alterations to the component.

(A) If the repair of a component would require a process unit shutdown, the repair may be delayed until the next scheduled process unit shutdown, provided that:

(i) (No change.)

(ii) the total cumulative mass emissions from leaking components in the process unit for which delay of repair is sought as determined in clause (i)(III) [subclause (IV)] of this subparagraph [~~clause~~] are less than the mass emissions resulting from shutdown of the unit as determined in clause (i)(IV) [subclause (IV)] of this subparagraph [~~clause~~]; and

(iii) (No change.)

(B) - (C) (No change.)

(D) Valves which can be safely repaired without a process unit shutdown, but without use of "extraordinary efforts" as described in subparagraph (A)(iii) of this paragraph, may not be placed on the shutdown list.

(E) All components in gas/vapor or light liquid service for which a repair attempt was made during a shutdown shall be monitored (with a hydrocarbon gas analyzer) and inspected for leaks within 30 days [~~or at the next monitoring period, whichever occurs first,~~] after startup is completed following the process unit shutdown. All components in heavy liquid service for which a repair attempt was made during a shutdown shall be inspected for leaks within 30 days after startup is completed following the process unit shutdown.

(3) - (10) (No change.)

§115.354. Inspection Requirements.

All affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas shall conduct a monitoring program consistent with the following provisions.

(1) - (9) (No change.)

(10) Except as provided in subparagraph (B) of this paragraph, the owner or operator shall use dataloggers and/or electronic data collection devices during all monitoring required by this section. The owner or operator shall use best efforts to transfer, on a daily basis, electronic data from electronic datalogging devices to the electronic database required by §115.356(2) of this title (relating to Monitoring and Recordkeeping Requirements).

(A) For all monitoring events in which an electronic data collection device is used, the collected monitoring data shall include the identification of each component and each calibration run, the maximum screening concentration detected, the time of monitoring (i.e., the time that the organic vapor analyzer trigger is pulled to record the concentration of each component [beginning and end]), a date stamp, an operator identification, an instrument identification, and calibration gas concentrations and certification dates. The acceptable rate for recording data shall be determined individually by each owner

or operator considering such factors including, but not limited to, the size of the equipment, the equipment type, the accessibility of the equipment, the number of leakers being found, and the skill of the monitoring technicians. Each owner or operator shall have a documented auditing process in place to assure proper calibration, identify response time failures, and assess pace anomalies.

(B) (No change.)

(C) Each change to the database regarding the monitored concentration, addition or deletion of components, or monitoring schedule shall be detailed in a log or inserted as a notation in the database. All such changes shall include the name of the person who made the change, the date of the change, and an explanation to support the change.

(11) - (12) (No change.)

§115.357. Exemptions.

For all affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following exemptions shall apply.

(1) - (6) (No change.)

(7) Plant sites covered by a single account number [Facilities] with less than 250 components in VOC service are exempt from the requirements of this division.

(8) - (9) (No change.)

(10) In the Houston/Galveston area, the requirements of Subchapter H of this chapter (relating to Highly-Reactive Volatile Organic Compounds) apply to components which qualify for one or more of the exemptions in paragraphs (1) - (9) of this section at any petroleum refinery; synthetic organic chemical, polymer, resin, or methyl tert-butyl ether manufacturing process; or natural gas/gasoline processing operation in which a highly-reactive volatile organic compound [HRVOC], as defined in §115.10 of this title (relating to Definitions), is a raw material, intermediate, final product, or in a waste stream.

§115.359. Counties and Compliance Schedules.

The owner or operator of each affected source in Brazoria, Chambers, Collin, El Paso, Dallas, Denton, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall:

(1) continue to comply with this division (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas) as required by §115.930 of this title (relating to Compliance Dates); ~~and~~

(2) comply with §115.356(2)(C) and (D) of this title (relating to Monitoring and Recordkeeping Requirements) as soon as practicable, but no later than March 31, 2004 ~~[December 31, 2003]~~; and

(3) develop and make available upon request to the executive director [appropriate regional office], EPA, and any local air pollution control agency having jurisdiction the recordkeeping required by §115.356(1), (3), and (4) of this title as soon as practicable, but no later than March 31, 2004 ~~[December 31, 2003]~~.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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**SUBCHAPTER H. HIGHLY-REACTIVE
VOLATILE ORGANIC COMPOUNDS
DIVISION 1. VENT GAS CONTROL**

30 TAC §§115.722, 115.725 - 115.727, 115.729

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA. The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.016, concerning Monitoring Requirements: Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants.

The proposed amendments implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017.

§115.722. Site-wide Cap and Control Requirements.

(a) (No change.)

(b) All flares shall continuously meet the requirements of ~~[comply with]~~ 40 Code of Federal Regulations §60.18(c) - (f) as amended through October 17, 2000 (65 FR 61744) when vent gas containing volatile organic compounds ~~[(VOC)]~~ is being routed to the flare.

(c) An owner or operator may not use emission reduction credits or discrete emission reduction credits [DERC] in order to demonstrate compliance with this division.

§115.725. Monitoring and Testing Requirements.

(a) Each vent gas stream at an account must be tested by applying the appropriate reference method tests and procedures specified in §115.125 of this title (relating to Testing Requirements) to establish maximum potential [actual and expected] highly-reactive volatile organic compound (HRVOC) emission data in accordance with the test plan required under §115.726 of this title (relating to Recordkeeping and Reporting Requirements) to demonstrate compliance with the control requirement of §115.722(a) of this title (relating to Site-wide Cap and Control Requirements). Process knowledge can be used to estimate emissions from pressure relief valves.

(b) (No change.)

(c) Testing using the appropriate reference method tests and procedures specified in §115.125 of this title which was conducted

before approval of the test plan [December 31, 2002] and which establishes maximum potential [actual and expected] HRVOC emissions data may be used in lieu of conducting the testing specified in subsection (a) of this section, provided that the owner or operator of the affected source obtains approval for the testing report and data from the executive director, and provided that the appropriate regional office was notified at least 45 days prior to testing and given an opportunity to observe the testing [Engineering Services Team].

(d) Except as specified in subsection (e) of this section, the owner or operator of an affected flare shall conduct continuous monitoring, as follows:

(1) - (7) (No change.)

(8) submit for approval by the executive director [Engineering Services Team] any minor modifications to these monitoring methods. Monitoring methods other than those specified in paragraphs (1) and (2) of this subsection may be used if approved [pre-approved] by the executive director [Engineering Services Team] and validated by 40 CFR Part 63, Appendix A, Test Method 301 (December 29, 1992).

(e) Flares used solely for abatement of emissions from loading operations for transport vessels are not required to comply with the monitoring requirements of subsection (a) of this section, provided the following requirements are satisfied.

(1) (No change.)

(2) Records of each loading activity are maintained, including, but not limited to:

(A) - (B) (No change.)

(C) the compounds loaded, in addition to the compounds loaded into the vessel immediately previous to the current loading operation, if the vessel being loaded is not clean;

(D) - (G) (No change.)

(3) - (4) (No change.)

§115.726. Recordkeeping and Reporting Requirements.

(a) The owner or operator of each affected flare or vent gas stream shall submit to the executive director for review and approval [by the Engineering Services Team] a test plan and a quality assurance plan (QAP) for the testing requirements and for the monitoring requirements (including installation, calibration, operation, and maintenance of continuous emissions monitoring systems) of this division (relating to Vent Gas Control) as follows:

(1) for monitoring:

(A) [(4)] for flares and vent gas streams existing on or before June 30, 2004, no later than April 30, 2004; [or]

(B) [(2)] for flares/vent gas streams that become subject to the requirements of this division after June 30, 2004, at least 60 days prior to being placed in highly-reactive volatile organic compound (HRVOC) service; and [-]

(C) the executive director shall issue written approval of, or detail deficiencies and/or direct additional requirements to be added to, each QAP within 180 days of receipt of a complete QAP that details the owner or operator's plans for installation, calibration, operation, and maintenance of the flare/vent gas stream monitoring. The owner or operator shall submit a corrected QAP within 60 days of the date of the deficiency and/or additional requirements letter. If an approval or detailed deficiency and/or directed additional requirements letter is not issued within 180 days of receipt by the executive director, then the QAP is approved by default;

(2) for testing:

(A) for flares and vent gas streams existing on or before June 30, 2004, no later than April 30, 2004;

(B) for flares/vent gas streams that become subject to the requirements of this division after June 30, 2004, at least 60 days prior to being placed in HRVOC service; and

(C) the executive director shall issue written approval of, or detail deficiencies and/or direct additional requirements to be added to, each test plan within 45 days of receipt of a complete test plan for a vent gas stream to be tested as required by §115.725(a) of this title (relating to Monitoring and Testing Requirements). The owner or operator shall submit a corrected test plan within 15 days of the date of the deficiency and/or additional requirements letter. If an approval or detailed deficiency and/or directed additional requirements letter is not issued within 45 days of receipt by the executive director, then the test plan is approved by default provided the testing is to be conducted in accordance with the appropriate reference methods and procedures specified in §115.125 of this title (relating to Testing Requirements) without deviation.

(b) (No change.)

(c) The owner or operator of a flare at an account that is subject to §115.722 of this title (relating to Site-wide Cap and Control Requirements) or [and] the continuous monitoring requirements of §115.725(d) or (e) of this title shall comply with the following recordkeeping requirements:

(1) - (2) (No change.)

(3) maintain records on a weekly basis that detail all corrective actions, and any delay in corrective action, taken by documenting the dates, reasons, and durations of such occurrences and the estimated quantity of all HRVOC emissions during such activities; and

(4) maintain records of each calculated net heating value of the gas stream routed to the flare and each calculated exit velocity at the flare tip, determined in accordance with the provisions of §115.725 of this title. [- and]

[(5) maintain all records required in this subsection for five years and make available for review upon request by authorized representatives of the executive director, EPA, or any local air pollution control agency with jurisdiction.]

(d) Records for exemptions shall include the following.

(1) - (2) (No change.)

(3) The owner or operator of any vent gas stream or flare claiming exemption under §115.727 of this title shall comply with the following recordkeeping requirements:

(A) for vent gas streams, maintain records which demonstrate continuous compliance with the exemption criteria of §115.727(e) of this title; or

(B) for flares, maintain records which demonstrate continuous compliance with the exemption criteria of §115.727(f) of this title.

(e) (No change.)

(f) [Retention and availability of records.] The owner or operator shall maintain all records required in this division and other records as necessary to demonstrate continuous compliance and records of periodic measurements for at least five years and make them available for review upon request by authorized representatives of the executive director, EPA, or any local air pollution control agency with jurisdiction.

§115.727. Exemptions.

(a) Any account for which no gas stream that is routed to a flare contains 5.0% or greater by weight of highly-reactive volatile organic compounds (HRVOC) at any time and no vent gas stream that is not routed to a flare contains more than 100 parts per million by volume (ppmv) HRVOC at any time is exempt from the requirements of §115.722 of this title (relating to Site-wide Cap and Control Requirements)[, with the exception of the recordkeeping requirements of §115.726(d) and (f) of this title (relating to Recordkeeping and Reporting Requirements)].

(b) Flares that at no time receive a gas stream containing 5.0% or greater HRVOC are exempt from the continuous monitoring requirements of §115.725(d) and (e) of this title (relating to Monitoring and Testing Requirements) and §115.726(c) of this title (relating to Recordkeeping and Reporting Requirements). The gas stream directed to the flare shall be treated as a vent gas stream for purposes of determining compliance with the site-wide cap of §115.722(a) of this title.

(c) - (d) (No change.)

(e) The following vent gas streams are exempt.

(1) A vent gas stream that has no potential to emit HRVOC is exempt from the requirements of this division, with the exception of the recordkeeping requirements of §115.726(d)(3) of this title.

(2) A vent gas stream that has the potential to emit HRVOC, but that has an HRVOC concentration less than 100 ppmv at all times, is exempt from §115.725 of this title and §115.726(a) of this title provided that the maximum potential HRVOC emissions for the sum of all vent gas streams claiming this exemption is less than 5.0% of the HRVOC cap for the account specified in §115.722(a) of this title.

(3) Vent gas streams from the following sources are exempt from the requirements of this division with the exception of the recordkeeping requirements of §115.726(d)(3) of this title:

(A) boilers, furnaces, engines, turbines, and heaters fired with fuel containing less than 5% HRVOC;

(B) pressure tanks which maintain working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere;

(C) laboratory vent hoods; and

(D) instrumentation air systems.

(f) Any flare that has no potential to emit HRVOC is exempt from the requirements of this division, with the exception of the recordkeeping requirements of §115.726(d)(3) of this title.

§115.729. Counties and Compliance Schedules.

Each owner or operator in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall demonstrate compliance with the requirements of this division (relating to Vent Gas Control) in accordance with the following schedule.

(1) Vent gas.

(A) The testing required by §115.725 of this title (relating to Monitoring and Testing Requirements) shall be completed and the results submitted to the appropriate regional office and any local air pollution control agency with jurisdiction [executive director] as soon as practicable, but no later than December 31, 2004 [June 30, 2004].

(B) (No change.)

(2) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stephanie Bergeron

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Texas Commission on Environmental Quality

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For further information, please call: (512) 239-4712



DIVISION 2. COOLING TOWER HEAT EXCHANGE SYSTEMS

30 TAC §115.764, §115.767

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA. The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.016, concerning Monitoring Requirements: Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants.

The proposed amendments implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017.

§115.764. Monitoring Requirements.

(a) The owner or operator of a cooling tower heat exchange system with a design capacity to circulate 8,000 gallons per minute (gpm) or greater of cooling water shall:

(1) - (4) (No change.)

(5) if the concentration of total strippable VOC is equal to or greater than 50 parts per billion by weight (ppbw) in the cooling tower water, collect an additional sample for strippable VOC speciation in accordance with §115.766 of this title from each inlet of the affected cooling tower at least once daily. The additional sampling for speciated strippable VOC shall continue on a daily basis until the concentration of total strippable VOC drops below 50 ppbw.

(b) The owner or operator of a cooling tower heat exchange system with a design capacity to circulate less than 8,000 gpm of cooling water shall:

(1) - (4) (No change.)

(5) if the calculated total strippable VOC concentration is equal to or greater than 50 ppbw in the cooling tower water, collect additional samples for strippable VOC analysis, in accordance with §115.766 of this title from each inlet of the affected cooling tower at

least once daily. The additional speciated strippable VOC sampling shall continue until the concentration of total strippable VOC drops below 50 ppbw.

(c) (No change.)

(d) The owner or operator of an affected cooling tower heat exchange system shall submit for review and approval by the executive director ~~[Engineering Services Team]~~ a quality assurance plan (QAP) for the installation, calibration, operation, and maintenance for the monitoring requirements of this division as follows:

(1) for cooling towers existing on or before June 30, 2004, no later than April 30, 2004; [ø]

(2) for cooling tower heat exchange systems that become subject to the requirements of this division after June 30, 2004, at least 60 days prior to being placed in HRVOC service. This plan shall be submitted prior to initiating a monitoring program to comply with the requirements of subsections (a) and (b) of this section. Additionally, the plan must define each compound which could potentially leak through the heat exchanger and therefore directly impact the emissions of the cooling water system; and [-]

(3) the executive director shall issue written approval of, or detail deficiencies and/or direct additional requirements to be added to, each QAP within 180 days of receipt of a complete QAP that details the owner or operator's plans for installation, calibration, operation, and maintenance of the cooling tower heat exchange system monitoring. The owner or operator shall submit a corrected QAP within 60 days of the date of the deficiency and/or additional requirements letter. If an approval or detailed deficiency and/or directed additional requirements letter is not issued within 180 days of receipt by the executive director, then the QAP is approved by default.

(e) In lieu of subsections (a)(2) - (5) and (b)(2) - (5) of this section, the owner or operator of cooling tower heat exchange systems in which no individual heat exchanger has 5.0% or greater HRVOC in the process-side fluid, shall determine total strippable VOC and the HRVOC concentration in the cooling tower water at least once per month, with an interval of not less than 20 days between samples, in accordance with appropriate methods in §115.766 of this title. If the total HRVOC concentration in the cooling tower water is ten ppbw or greater, the owner or operator shall determine total strippable VOC at least daily.

(f) In lieu of using a continuous flow monitor as described in subsections (a)(1) and (b)(1) of this section, the owner or operator of cooling tower heat exchange systems may use the maximum potential flow rate based on manufacturer's pump performance data, assuming no back pressure.

§115.767. Recordkeeping Requirements.

(a) - (c) (No change.)

(d) The owner or operator of any cooling tower heat exchange system using the alternate periodic monitoring available under §115.764(e) of this title shall comply with the following recordkeeping requirements:

(1) maintain records sufficient to demonstrate that no individual heat exchanger has 5.0% or greater HRVOC in the process-side fluid; and

(2) maintain records of the sampling and calculations used to determine the total strippable VOC and the HRVOC concentration in the cooling tower water;

(e) The owner or operator of any cooling tower heat exchange system using manufacturer's pump performance data to determine the

maximum potential flow rate, as specified in §115.764(f) of this title, shall comply with the following recordkeeping requirements:

(1) maintain records of all changes to any pump or pumping system; and

(2) maintain records of the effect those changes have on the maximum potential flow rate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. FUGITIVE EMISSIONS

30 TAC §§115.781, 115.783, 115.785, 115.787, 115.789

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA. The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.016, concerning Monitoring Requirements: Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants.

The proposed amendments implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017.

§115.781. General Monitoring and Inspection Requirements.

(a) The owner or operator shall identify the components of each process unit in highly-reactive volatile organic compound (HRVOC) service which is subject to this division (relating to Fugitive Emissions). Such identification must allow for ready identification of the components, and distinction from any components which are not subject to this division. ~~[Except for connectors, each component shall be labeled with a unique component identification code. Connectors are not required to be individually labeled if they are clearly identified individually in the master components log.]~~ The components [also] must be identified by one or more of the following methods:

(1) - (6) (No change.)

(b) Each component in the process unit must be monitored according to the requirements of Subchapter D, Division 3 of this chapter (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone

Nonattainment Areas), except that the following additional requirements apply.

(1) - (3) (No change.)

(4) All components for which a repair attempt was made during a shutdown shall be monitored (with a hydrocarbon gas analyzer) and inspected for leaks within 30 days ~~or at the next monitoring period, whichever occurs first,~~ after startup is completed following the shutdown.

(5) - (6) (No change.)

(7) An unsafe-to-monitor or difficult-to-monitor component for which quarterly monitoring is specified may instead be monitored as follows [annually].

(A) An unsafe-to-monitor component is a component that the owner or operator determines is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of conducting quarterly monitoring. Components which are unsafe to monitor shall be identified in a list made available upon request. If an unsafe-to-monitor valve is not considered safe to monitor within a calendar year, then it shall be monitored as soon as possible during safe-to-monitor times. For components in light liquid or heavy liquid service, inert gas or hydraulic testing shall be conducted at normal operating temperature and pressure to assure in-place leak-free performance before each startup of the process unit where the unsafe-to-monitor component is located. Inert gas or hydraulic testing is not required more than four times per year or more than once a month if the unsafe-to-monitor component has not been found to leak in the 12 consecutive months preceding startup. Leak-free performance shall be evaluated by audio and visual inspections in concert with ability to hold operating pressure for hydraulic testing and soap bubble screening for gas testing.

(B) A difficult-to-monitor component is a component that cannot be inspected without elevating the monitoring personnel more than two meters above a permanent support surface. A difficult-to-monitor component for which quarterly monitoring is specified may instead be monitored annually.

(8) - (10) (No change.)

(c) - (e) (No change.)

(f) As an alternative to the requirements of subsection (b)(3) of this section for blind flanges, caps, or plugs at the end of a pipe or line containing HRVOC, connectors, bolted manways, heat exchanger heads, hatches, and sump covers, the owner or operator may elect to monitor all of these components in a process unit by April 1, 2006 and then conduct subsequent monitoring at the following frequencies:

(1) once per year (i.e., 12-month period), if the percent leaking blind flanges, caps, or plugs at the end of a pipe or line containing HRVOC, connectors, bolted manways, heat exchanger heads, hatches, and sump covers in the process unit was 0.5% or greater during the last required annual or biennial monitoring period;

(2) once every two years, if the percent leaking blind flanges, caps, or plugs at the end of a pipe or line containing HRVOC, connectors, bolted manways, heat exchanger heads, hatches, and sump covers was less than 0.5% during the last required monitoring period. An owner or operator may comply with this paragraph by monitoring at least 40% of the components in the first year and the remainder of the components in the second year. The percent leaking connectors, bolted manways, heat exchanger heads, hatches, and sump covers will be calculated for the total of all monitoring performed during the two-year period;

(3) if the owner or operator of a process unit in a biennial leak detection and repair program calculates less than 0.5% leaking blind flanges, caps, or plugs at the end of a pipe or line containing HRVOC, connectors, bolted manways, heat exchanger heads, hatches, and sump covers from the two-year monitoring period, the owner or operator may monitor the components one time every four years. An owner or operator may comply with the requirements of this paragraph by monitoring at least 20% of the components each year until all connectors, bolted manways, heat exchanger heads, hatches, and sump covers have been monitored within four years;

(4) if a process unit complying with the requirements of paragraph (3) of this subsection using a four-year monitoring interval program has greater than or equal to 0.5% but less than 1.0% leaking blind flanges, caps, or plugs at the end of a pipe or line containing HRVOC, connectors, bolted manways, heat exchanger heads, hatches, and sump covers, the owner or operator shall increase the monitoring frequency to one time every two years. An owner or operator may comply with the requirements of this paragraph by monitoring at least 40% of the components in the first year and the remainder of the components in the second year. The owner or operator may again elect to use the provisions of paragraph (3) of this subsection when the percent leaking components decreases to less than 0.5%;

(5) if a process unit complying with requirements of paragraph (3) of this subsection using a four-year monitoring interval program has greater than or equal to 1.0% but less than 2.0% leaking blind flanges, caps, or plugs at the end of a pipe or line containing HRVOC, connectors, bolted manways, heat exchanger heads, hatches, and sump covers, the owner or operator shall increase the monitoring frequency to one time per year. The owner or operator may again elect to use the provisions of paragraph (3) of this subsection when the percent leaking components decreases to less than 0.5%; and

(6) if a process unit complying with requirements of paragraph (3) of this subsection using a four-year monitoring interval program has 2.0% or greater leaking blind flanges, caps, or plugs at the end of a pipe or line containing HRVOC, connectors, bolted manways, heat exchanger heads, hatches, and sump covers, the owner or operator shall increase the monitoring frequency to quarterly. The owner or operator may again elect to use the provisions of paragraph (3) of this subsection when the percent leaking components decreases to less than 0.5%.

§115.783. Equipment Standards.

The following equipment standards shall apply.

(1) - (2) (No change.)

(3) Each pressure relief valve in gaseous highly-reactive volatile organic compound (HRVOC) [HRVOC] service that vents to atmosphere which is installed in series with a rupture disk, pin, second relief valve, or other similar leak-tight pressure relief component, shall be equipped with a pressure sensing device or an equivalent device or system between the pressure relief valve and the other pressure relief component to monitor for leakage past the first component. When leakage is detected past the first component, that component shall be repaired or replaced as soon as practicable, but no later than 30 calendar days after the failure is detected.

(4) Pumps, compressors, and agitators installed on or after July 1, 2003 shall be equipped with a shaft sealing system that prevents or detects emissions of VOC from the seal.

(A) (No change.)

(B) The executive director may approve shaft sealing systems different from those specified in subparagraph (A) of this paragraph. The executive director:

(i) shall consider on a case-by-case basis the technological circumstances of the individual pump, compressor, or agitator; and

(ii) must determine that the alternative shaft sealing system will result in the lowest emissions level that the pump, compressor, or agitator is capable of meeting after the application of best available control technology before approving the alternative shaft sealing system. [; and]

~~[(iii) is the Engineering Services Team, Office of Compliance and Enforcement, for purposes of this section.]~~

(C) (No change.)

(5) (No change.)

(6) Except for pressure relief valves, no valves shall be installed or operated at the end of a pipe or line containing HRVOC unless the pipe or line is sealed with a second valve, a blind flange, or a tightly-fitting plug or cap. The sealing device may be removed only while a sample is being taken or during maintenance operations, and when closing the line, the upstream valve shall be closed first.

§115.785. Testing Requirements.

The owner or operator shall perform testing to demonstrate compliance with §115.783(2) of this title (relating to Equipment Standards) using the test methods specified in §115.125 of this title (relating to Testing Requirements). The owner or operator is responsible for providing testing facilities and conducting the sampling and testing operations at its expense.

(1) - (2) (No change.)

(3) A written proposed description of any minor test method modifications allowed under §115.125(4) of this title shall be made available to the regional office before the pretest meeting. The executive director ~~[regional director or the manager of the Engineering Services Team, Office of Compliance and Enforcement,]~~ will approve or disapprove of any deviation from specified sampling procedures.

(4) (No change.)

(5) Testing using the appropriate reference test methods and procedures specified in §115.125 of this title which was [Early testing] conducted before approval of the test plan required under §115.726 of this title (relating to Recordkeeping and Reporting Requirements) and which establishes maximum potential highly-reactive volatile organic compound emissions data [December 31, 2002] may be used to demonstrate compliance with the standards specified in this division (relating to Fugitive Emissions), provided that the owner or operator of the affected source obtains approval for the testing report and data from the executive director, and provided that the appropriate regional office was notified at least 45 days prior to testing and given an opportunity to observe the testing [if the owner or operator of an affected source demonstrates to the satisfaction of the executive director that the prior compliance testing meets the requirements of paragraphs (1) - (4) of this section]. For [early] testing conducted before approval of the test plan, the compliance stack test report required by paragraph (6) of this section shall be as complete as necessary to demonstrate to the executive director that the stack test was valid and the source has complied with the rule. The executive director reserves the right to request compliance testing or monitoring system performance evaluation at any time.

(6) (No change.)

§115.787. Exemptions.

(a) - (b) (No change.)

(c) The following components are exempt from the requirements of this division:

(1) conservation vents or other devices on atmospheric storage tanks that are actuated either by a vacuum or a pressure of no more than 2.5 pounds per square inch, gauge (psig);

(2) - (5) (No change.)

(6) sampling connection systems, as defined in 40 Code of Federal Regulations (CFR) §63.161 (January 17, 1997), which are in compliance with 40 CFR [Code of Federal Regulations] §63.166(a) and (b) (June 20, 1996).

(d) - (f) (No change.)

§115.789. Counties and Compliance Schedules.

The owner or operator of each petroleum refinery; synthetic organic chemical, polymer, resin, or methyl tert-butyl ether manufacturing process; or natural gas/gasoline processing operation in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall demonstrate compliance with the requirements of this division (relating to Fugitive Emissions) in accordance with the following schedule.

(1) The initial monitoring of all components for which monitoring is required under this division, but which are not required to be monitored under Subchapter D, Division 3 of this chapter (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas), shall occur as soon as practicable, but no later than March 31, 2004. However, the schedule in §115.781(f) of this title (relating to General Monitoring and Inspection Requirements) shall apply to blind flanges, caps, or plugs at the end of a pipe or line containing highly-reactive volatile organic compounds, connectors, bolted manways, heat exchanger heads, hatches, and sump covers for which the owner or operator has notified the appropriate regional office and any local air pollution control program with jurisdiction that §115.781(f) of this title will be used to establish the monitoring schedule for these components [December 31, 2003].

(2) All equipment upgrades required by §115.783 of this title (relating to Equipment Standards) must be made as soon as practicable, but no later than March 31, 2004 [December 31, 2003].

(3) (No change.)

(4) The testing required by §115.785 of this title (relating to Testing Requirements) shall be conducted as soon as practicable, but no later than December 31, 2004 [December 31, 2003].

(5) Compliance with the recordkeeping required by §115.786 of this title (relating to Recordkeeping Requirements) shall be implemented and made available upon request to authorized representatives of the executive director, EPA, or any local air pollution control agency having jurisdiction as soon as practicable, but no later than March 31, 2004 [December 31, 2003].

(6) The initial monitoring of pump seals and compressor seals using a leak definition of 500 parts per million by volume, as required by §115.781(b)(9) of this title ~~[(relating to General Monitoring and Inspection Requirements)]~~, shall begin as soon as practicable, but no later than March 31, 2004 [December 31, 2003].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on May 2, 2003.

TRD-200302732

Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 15, 2003
For further information, please call: (512) 239-4712

CHAPTER 312. SLUDGE USE, DISPOSAL, AND TRANSPORTATION

The Texas Commission on Environmental Quality (commission) proposes amendments to §§312.8, 312.50, and 312.64.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Senate Bill (SB) 405, 77th Legislature, established the Texas Board of Professional Geoscientists and the regulation of professional geoscientists. The Geoscience Practice Act (the Act) requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. The primary purpose of the proposed amendments is to establish regulations for the public practice of geoscience in conformance with the Act by requiring a person who prepares and submits geoscientific information to the commission to be a licensed professional geoscientist. The Act also allows certain specified engineers to publicly practice geoscience in conformance with the Act. According to the bill analysis prepared at the time of passage, the ultimate purpose of the Act was public safety through the public registration of the practice of geoscience.

SECTION BY SECTION DISCUSSION

Throughout the sections, administrative changes are proposed in accordance with *Texas Register* requirements and to be consistent with other agency rules.

Proposed §312.8, General Definitions, amends the introductory paragraph by deleting the word "shall" and the phrase "unless the context clearly indicates otherwise." The definition of licensed professional geoscientist is proposed to be added as new paragraph (46) and the definition of qualified groundwater scientist is proposed to be deleted. The definitions for Clean Water Act (CWA), commission, United States Environmental Protection Agency (EPA), executive director, and person are also proposed to be deleted because these definitions are located in 30 TAC §3.2. All existing paragraphs are proposed to be renumbered accordingly.

Proposed §312.50(a), Storage and Staging of Sludge at Beneficial Use Sites, substitutes "must" for "shall." In proposed subsection (a)(4), the use of "groundwater" as a single word is proposed to reflect current agency usage and a minor punctuation error is corrected. Proposed subsection (a)(4) would require that certification of the completed storage area lining be made by a licensed professional engineer or licensed professional geoscientist prior to using the facilities and that the certification be signed, sealed, and dated by a licensed professional engineer or licensed professional geoscientist.

Proposed §312.64, Management Practices, amends subsection (n) by substituting "must" for "shall" in the first sentence and replacing licensed professional geoscientist or licensed professional engineer for qualified groundwater scientist as the person who shall develop the groundwater monitoring program or certify

that sewage sludge will not contaminate an aquifer. The licensed professional geoscientist shall also sign, seal, and date the certification or the results of the program.

FISCAL NOTE

Doretta Conrad, Analyst in the Budget and Planning Division, has determined that, for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for the agency or any other unit of state government as a result of administration or enforcement of the proposed rules. There will be no fiscal impact to the agency; however, there may be fiscal implications to the agency if the agency elects to reimburse staff for the annual renewal fees. The fees associated with obtaining the professional geoscientist license is \$200 to cover the application and first-year license, and \$150 per year after the first year.

Ms. Conrad also determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed rules will be potentially improved environmental performance by persons regulated by the commission. The proposed rules might impact other state agencies or local governments with staff geologists who need to become licensed under these rules. No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed rules. Additionally, no significant fiscal implications are anticipated for any small or micro-business due to implementation of the proposed rules. The commission has determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the proposed rules is to establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Act. The Act requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by a state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. The proposed rules are not specifically intended to protect the environment or reduce risks to human health. The proposed rules are intended to establish procedures to require that specific reports and necessary data submitted to the commission be produced, signed, sealed, and dated by licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists. Therefore, it is not anticipated that the proposed rules will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that these proposed rules do not meet the definition of major environmental rule.

Furthermore, even if the proposed rulemaking did meet the definition of a major environmental rule, the amendments are not subject to Texas Government Code, §2001.0225, because they do not accomplish any of the four results specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed amendments to Chapter 312 do not meet any of these requirements. First, there are no federal standards that these rules would exceed. Second, the proposed rules do not exceed an express requirement of state law. Third, there is no delegation agreement that would be exceeded by these proposed rules. Fourth, the commission proposes these rules to allow for the public practice of geoscience in agency procedures in conformance with the Act. Therefore, the commission does not propose the adoption of the rules solely under the commission's general powers.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007. The specific intent of the proposed rules is to establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Act. The proposed rules would substantially advance this stated purpose by requiring that specific reports and necessary data submitted to the commission be produced, signed, sealed, and dated by licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property by burdening private real property, nor restricting or limiting a landowner's right to property, or reducing the value of property by 25% or more beyond that which would otherwise exist in the absence of the proposed rulemaking. These proposed rules simply require that specific portions of applications or necessary data submitted to the commission be produced, signed, sealed, and dated by a qualified professional individual who has demonstrated his or her qualifications by obtaining a license to engage in the public practice of geoscience from the Texas Board of Professional Geoscientists. These proposed rules do not affect any private real property.

There are no burdens imposed on private real property, and the benefits to society are better applications for environmental permits based upon reliable reports and data submitted by qualified licensed professional geoscientists.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal

Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or will affect an action and/or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6), and will therefore require that applicable goals and policies of the CMP be considered during the rulemaking process. The commission has prepared a consistency determination for the proposed rules under 31 TAC §505.22 and found that the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rules include the construction and operation of solid waste treatment, storage, and disposal facilities, and the discharge of municipal and industrial wastewater to coastal waters. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies because the proposed rule changes do not modify or alter standards set forth in existing rules, and do not govern or authorize any actions subject to the CMP. The proposed rulemaking would require a person who prepares and submits geoscientific information to the agency to be a licensed professional geoscientist. The commission invites public comment on the consistency determination of the proposed rules.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., June 16, 2003, and should reference Rule Log Number 2001-051C-321-WS. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §312.8

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas. The proposed amendment implements TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§312.8. *General Definitions.*

The following words and terms, when used in this chapter, [shall] have the following meanings [meaning; unless the context clearly indicates otherwise].

(1) 25-year, 24-hour rainfall event--The rainfall event with a recurrence interval of once in 25 [twenty-five] years, with a duration of 24 hours as defined by the National Weather Service in Technical Paper Number 40, Rainfall Frequency Atlas of the United States, May 1961, and subsequent amendments, or equivalent regional or state rainfall information developed therefrom.

(2)-(11) (No change.)

(12) Base flood--A flood that has a 1% ~~[one percent]~~ chance of occurring in any given year.

(13) Beneficial Use--Placement of sewage sludge onto land in a manner which complies with the requirements of Subchapter B of this chapter (relating to Land Application for Beneficial Use and Storage at Beneficial Use Sites), and does not exceed the agronomic need or rate for a cover crop, or any metal or toxic constituent limitations which the cover crop may have. Placement of sewage sludge on the land at a rate below the optimal agronomic rate will be considered a beneficial use.

(14)-(15) (No change.)

~~[(16) CWA--The Clean Water Act (formerly referred to as either the Federal Water Pollution Act or the Federal Water Pollution Control Act Amendments of 1972), Public Law 92-500, as amended by Public Law 95-217, Public Law 96-483, Public Law 97-117, and Public Law 100-4.]~~

(16) ~~[(17)]~~ Class A sewage [Sewage] sludge--Sewage sludge meeting one of the pathogen reduction requirements ~~[requirement]~~ in §312.82(a) of this title (relating to Pathogen Reduction).

(17) ~~[(18)]~~ Class B sewage [Sewage] sludge--Sewage sludge meeting one of the pathogen reduction requirements in §312.82(b) of this title.

~~[(19) Commission--The Texas Natural Resource Conservation Commission.]~~

(18) ~~[(20)]~~ Contaminate an aquifer--To introduce a substance that causes the maximum contaminant level for nitrate in 40 Code of Federal Regulations (CFR) ~~[CFR]~~ §141.11, as amended, to be exceeded in groundwater ~~[ground water]~~ or that causes the existing concentration of nitrate in groundwater ~~[ground water]~~ to increase when the existing concentration of nitrate in the groundwater ~~[ground water]~~ already exceeds the maximum contaminate level for nitrate in 40 CFR §141.11, as amended.

(19) ~~[(21)]~~ Cover--Soil or other material used to cover sewage sludge placed on an active sludge unit.

(20) ~~[(22)]~~ Cover crop--Grasses or small grain crop, such as oats, wheat, or barley, not grown for harvest.

(21) ~~[(23)]~~ Cumulative metal loading rate--The maximum amount of an inorganic pollutant (dry weight basis) that may be applied to a unit area of land.

(22) ~~[(24)]~~ Density of microorganisms--The number of microorganisms per unit mass of total solids (dry weight basis) in the sewage sludge.

(23) ~~[(25)]~~ Displacement--The relative movement of any two sides of a fault measured in any direction.

(24) ~~[(26)]~~ Disposal--The placement of sewage sludge on the land for any purpose other than beneficial use. Disposal shall not include placement onto the land where the activity has been approved by the executive director or commission as storage or temporary storage and it occurs only for the period of time expressly approved.

(25) ~~[(27)]~~ Domestic septage--Either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap.

(26) ~~[(28)]~~ Domestic sewage--Waste and wastewater from humans or household operations that is discharged to a wastewater collection system or otherwise enters a treatment works.

(27) ~~[(29)]~~ Dry weight basis--Calculated on the basis of having been dried at 105 degrees Celsius until reaching a constant mass (i.e., essentially 100% solids content).

~~[(30) EPA--The United States Environmental Protection Agency.]~~

~~[(31) Executive director--The executive director of the Texas Natural Resource Conservation Commission or his/her designee.]~~

(28) ~~[(32)]~~ Experimental use [Use] - Non-routine beneficial use land application or reclamation projects where sewage sludge is added to the soil for research purposes, in pilot projects, feasibility studies, or similar projects.

(29) ~~[(33)]~~ Facility--Includes all contiguous land, structures, other appurtenances, and improvements on the land used for the surface disposal, land application for beneficial use, or incineration of sewage sludge.

(30) ~~[(34)]~~ Fault--A fracture or zone of fractures in any materials along which strata, rocks, or soils on one side are displaced with respect to strata, rocks, or soil on the other side.

(31) ~~[(35)]~~ Feed crops--Crops produced primarily for consumption by domestic livestock, such as swine, goats, cattle, or poultry.

(32) ~~[(36)]~~ Fiber crops--Crops such as flax and cotton.

(33) ~~[(37)]~~ Final cover--The last layer of soil or other material placed on a sludge unit at closure.

(34) ~~[(38)]~~ Floodway--A channel of a river or watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the surface elevation more than one foot.

(35) ~~[(39)]~~ Food crops--Crops consumed by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

(36) ~~[(40)]~~ Forest--Land densely vegetated with trees and/or underbrush.

(37) ~~[(41)]~~ Grit trap waste--~~Includes [Grit trap waste includes]~~ waste from interceptors placed in the drains prior to entering the sewer system at maintenance and repair shops, automobile service stations, car washes, laundries, and other similar establishments.

(38) ~~[(42)]~~ Groundwater ~~[Ground water]~~--Water below the land surface in the saturated zone.

(39) ~~[(43)]~~ Holocene time--The most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present. Holocene time began approximately 10,000 years ago.

(40) ~~[(44)]~~ Industrial wastewater--Wastewater generated in a commercial or industrial process.

(41) ~~[(45)]~~ Institution--An established organization or corporation, especially of a public nature or where the public has access, such as child care facilities, public buildings, or health care facilities.

(42) ~~[(46)]~~ Land application--The spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

(43) [(47)] Land with a high potential for public exposure--Land that the public uses frequently and/or is not provided with a means of restricting public access.

(44) [(48)] Land with a low potential for public exposure--Land that the public uses infrequently and/or is provided with a means of restricting public access.

(45) [(49)] Leachate collection system--A system or device installed immediately above a liner that is designed, constructed, maintained, and operated to collect and remove leachate from a sludge unit.

(46) Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(47) [(50)] Liner--Soil or synthetic material that has a hydraulic conductivity of 1×10^{-7} centimeters per second or less. Soil liners shall be of suitable material with more than 30% passing a number 200 sieve, have a liquid limit greater than 30%, a plasticity index greater than 15, compaction of greater than 95% Standard Proctor at optimum moisture content, and will be at least two feet thick placed in six-inch [six ineh] lifts. Synthetic liners shall be a membrane with a minimum thickness of 20 mils and include an underdrain leak detection system.

(48) [(54)] Lower explosive limit for methane gas--The lowest percentage of methane in air, by volume, that propagates a flame at 25 degrees Celsius and atmospheric pressure.

(49) [(52)] Metal limit--A numerical value that describes the amount of a metal allowed per unit amount of sewage sludge (e.g., milligrams per kilogram of total solids); the amount of a pollutant that can be applied to a unit area of land (e.g. kilograms per hectare); or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

(50) [(53)] Monofill--A landfill or landfill trench in which sewage sludge is the only type of solid waste placed.

(51) [(54)] Municipality--A city, town, county, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or under state [State] law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge management; or a designated and approved management agency[Agency] under Clean Water Act, §208 [of the CWA], as amended. The definition includes a special district created under state [State] law, such as a water district, sewer district, sanitary district, or an integrated waste management facility as defined in Clean Water Act, §201(e) [of the CWA], as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of sewage sludge.

(52) [(55)] Off-site--Property which cannot be characterized as "on-site."

(53) [(56)] On-site--The same or contiguous property owned, controlled, or supervised by the same person. If the property is divided by public or private right-of-way, the access shall be by crossing the right-of-way or the right-of-way shall be under the control of the person.

(54) [(57)] Operator--The person responsible for the overall operation of a facility or beneficial use site.

(55) [(58)] Other container--Either an open or closed receptacle, including, but not limited to, a bucket, box, or a vehicle or

trailer with a load capacity of one metric ton (2,200 [2200] pounds) or less.

(56) [(59)] Owner--The person who owns a facility or part of a facility.

(57) [(60)] Pasture--Land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, forbs, or stover.

(58) [(64)] Pathogenic organisms--Disease-causing [Disease causing] organisms including, but not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

[(62)] Person--An individual, association, partnership, corporation, municipality, state or federal agency, or an agent or employee thereof.}]

(59) [(63)] Person who prepares sewage sludge--Either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

(60) [(64)] Place sewage sludge or sewage sludge placed--Disposal of sewage sludge on a surface disposal site.

(61) [(65)] Pollutant--An organic or inorganic substance, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the executive director, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

(62) [(66)] Process or processing [Processing]--For the purposes of this chapter, these terms shall have the same meaning as "treat" or "treatment." ["treatment".]

(63) [(67)] Public contact site--Land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, plant nurseries, turf farms, and/or golf courses.

[(68)] Qualified groundwater scientist--An individual with a baccalaureate or post graduate degree in the natural sciences or engineering who has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by State registration, professional certification, or completion of accredited university programs that enable the individual to make sound professional judgments regarding groundwater monitoring, pollutant fate and transport, and corrective action.}]

(64) [(69)] Range land--Open land with indigenous vegetation.

(65) [(70)] Reclamation site--Drastically disturbed land that is reclaimed using sewage sludge. This includes, but is not limited to, strip mines and/or construction sites.

(66) [(74)] Runoff--Rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off the land surface.

(67) [(72)] Seismic impact zone--An area that has a 10% or greater probability that the horizontal ground level acceleration of the rock in the area exceeds 0.10 gravity once in 250 years.

(68) [(73)] Sewage sludge [Sludge]--Solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum, or solids removed in primary, secondary, or

advanced wastewater treatment processes; and material derived from sewage sludge. Sewage sludge does not include ash generated during preliminary treatment of domestic sewage in a treatment works.

(69) [(74)] Sewage sludge debris [~~Sludge Debris~~]-Solid material such as rubber, plastic, glass, or other trash which may pass through a wastewater treatment process or sludge process or may be collected with septage. This solid material is visibly distinguishable from sewage sludge. This material does not include grit or screenings removed during the preliminary treatment of domestic sewage at a treatment works, nor does it include grit trap waste.

(70) [(75)] Sludge lagoon--An existing surface impoundment located on-site at a wastewater treatment plant for the storage of sewage sludge. Any other type impoundment shall be considered an active sludge unit, as defined in this section.

(71) [(76)] Sludge unit--Land on which only sewage sludge is placed for disposal. A sludge unit shall be used for sewage sludge. This does not include land on which sewage sludge is either stored or treated.

(72) [(77)] Sludge unit boundary--The outermost perimeter of a surface disposal site.

(73) [(78)] Source separated yard waste [~~Separated Yard Waste~~]-For purposes of this chapter, shall have the same definition as found in Chapter 332 of this title (relating to Composting).

(74) [(79)] Specific oxygen uptake rate (SOUR)--The mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in the sewage sludge.

(75) [(80)] Staging--Temporary holding of sewage sludge at a beneficial use site, for up to a maximum of seven calendar days, prior to the land application of the sewage sludge.

(76) [(81)] Store or storage--The placement of sewage sludge on land for longer than seven days.

(77) [(82)] Temporary storage [~~Storage~~]-Storage of waste regulated under this chapter by a transporter, which has been approved in writing by the executive director, in accordance with §312.147 of this title[.] (relating to Temporary Storage).

(78) [(83)] Three hundred sixty-five [~~Three hundred sixty-five~~ (365)] day period--A running total which covers the period between sludge application to a site and the nutrient uptake of the cover crop.

(79) [(84)] Total solids--The materials in sewage sludge that remain as residue if the sewage sludge is dried at 103 degrees Celsius to 105 degrees Celsius.

(80) [(85)] Transporter--Any person who collects, conveys, or transports sewage sludge, water treatment plant sludges, grit trap waste, grease trap waste, chemical toilet waste, and/or septage by roadway, ship, rail, or other means.

(81) [(86)] Treat or treatment of sewage sludge--The preparation of sewage sludge for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

(82) [(87)] Treatment works--Either a federally [~~Federally~~] owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.

(83) [(88)] Unstabilized solids--Organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

(84) [(89)] Unstable area--Land subject to natural or human induced forces that may damage the structural components of an active sewage sludge unit. This includes, but is not limited to, land on which the soils are subject to mass movement.

(85) [(90)] Vector attraction--The characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

(86) [(91)] Volatile solids--The amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550 degrees Celsius in the presence of excess oxygen.

(87) [(92)] Water treatment sludge [~~Treatment Sludge~~]-Sludge generated during the treatment of either surface water or groundwater [~~ground water~~] for potable use, which is not an industrial solid waste as defined in §335.1 of this title (relating to Definitions).

(88) [(93)] Wetlands--Those areas that are inundated or saturated by surface water or groundwater [~~ground water~~] at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302734

Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: June 15, 2003

For further information, please call: (512) 239-0348

SUBCHAPTER B. LAND APPLICATION FOR BENEFICIAL USE AND STORAGE AT BENEFICIAL USE SITES

30 TAC §312.50

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendment implements TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§312.50. *Storage and Staging of Sludge at Beneficial Use Sites.*

(a) Except as provided in subsection (b) of this section, storage of sludge at a beneficial land application site must [~~shall~~] not exceed 90 days. Storage is allowed only when the following requirements are carried out. [:]

(1) (No change.)

(2) The storage area must be operated and maintained to prevent surface water runoff and to prevent a release to groundwater [~~ground water~~]. Discharge of storm water or wastewater which has come into contact with sewage sludge is prohibited. The storage area shall be designed to collect such runoff. Any runoff collected during the storage of sewage sludge shall be disposed in a manner to prevent a release to groundwater [~~ground water~~].

(3) (No change.)

(4) The storage area must be lined to prevent a release to groundwater [~~ground water~~]. Natural or artificial liners are required for leachate control. A natural liner or equivalent barrier of one foot of compacted clay with a permeability coefficient of 1×10^{-7} cm/sec or less must [~~shall~~] be provided. Various flexible synthetic membrane lining materials may be used in lieu of soil liners if prior written approval has been obtained from the executive director. The registrant shall furnish certification by a licensed professional engineer or licensed professional geoscientist that the completed storage area lining meets the appropriate criteria described in this section prior to using the facilities. The certification shall be signed, sealed, and dated by a licensed professional engineer or licensed professional geoscientist.

(5)-(9) (No change.)

(b) Up to an additional 90 days of storage will be allowed with the prior approval of the appropriate Texas Commission on Environmental Quality [~~TNRCC~~] regional office, for reasons associated with application area flooding, saturated soils, or frozen soils.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 2, 2003.

TRD-200302735

Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: June 15, 2003

For further information, please call: (512) 239-0348



SUBCHAPTER C. SURFACE DISPOSAL

30 TAC §312.64

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendment implements TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§312.64. *Management Practices.*

(a)-(e) (No change.)

(f) An active sludge unit shall not be located in a wetland except as provided in permit issued under [~~pursuant to~~] the Clean Water Act, §402 or §404.

(g)-(m) (No change.)

(n) Sewage sludge placed on an active sludge unit must [~~shall~~] not contaminate an aquifer. Results of a groundwater monitoring program developed by a licensed professional geoscientist or licensed professional engineer [~~qualified groundwater scientist~~] or a certification by a licensed professional geoscientist or licensed professional engineer shall [~~qualified groundwater scientist shall~~] be used to demonstrate that sewage sludge placed on an active sludge unit does not contaminate an aquifer. The results or certification shall be signed, sealed, and dated by the licensed professional geoscientist or licensed professional engineer preparing the results or certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 238-0348



CHAPTER 321. CONTROL OF CERTAIN ACTIVITIES BY RULE

The Texas Commission on Environmental Quality (commission) proposes amendments to §§321.32, 321.35, 321.39, 321.55, 321.252, 321.255, 321.271, and 321.274.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Senate Bill (SB) 405, 77th Legislature, established the Texas Board of Professional Geoscientists and the regulation of professional geoscientists. The Geoscience Practice Act (the Act) requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. The primary purpose of the proposed amendments is to establish regulations for the public practice of geoscience in conformance with the Act by requiring a person who prepares and submits geoscientific information to the commission to be a licensed professional geoscientist. The Act also allows certain specified engineers to publicly practice geoscience in conformance with the Act. According to the bill analysis prepared at the time of passage, the ultimate purpose of the Act was public safety through the public registration of the practice of geoscience.

SECTION BY SECTION DISCUSSION

Throughout the sections, administrative changes are proposed in accordance with *Texas Register* requirements and to be consistent with other agency rules.

Proposed §321.32, Definitions, amends the introductory paragraph by deleting the word "shall" and the phrase "unless the context clearly indicates otherwise." The definition of licensed

professional geoscientist is proposed to be added and the definition of qualified groundwater scientist is proposed to be deleted, and existing paragraphs (20) - (33) are proposed to be renumbered accordingly.

Proposed §321.35(c), Procedures for Making Application for Registration, makes minor grammatical corrections, substituting "that" for "which" and removing "such." In proposed subsection (c)(8), substitutes "shall" for "must" and requires that documentation of liner certifications be prepared, signed, sealed, and dated either by a licensed professional engineer or a licensed professional geoscientist. In subsection (c)(10), the commission proposes that a recharge feature certification may be made by a Natural Resources Conservation Service (NRCS) engineer, a licensed professional engineer, or a licensed professional geoscientist (rather than a qualified groundwater scientist). In subsection (c)(10)(G), licensed professional geoscientist is proposed to be substituted for qualified groundwater scientist, and a minor grammatical error is proposed to be corrected. In subsection (c)(11), the commission proposes to replace qualified groundwater scientist with licensed professional geoscientist; to correct two minor grammatical errors; and to break the final sentence into two sentences for readability. In subsection (c)(11)(B), the commission proposes to require that the groundwater monitoring plan be prepared, certified, signed, sealed, and dated by a licensed professional geoscientist and to substitute "must" for "shall." Cross-references in §321.35(b), (d), (e), and (h) are proposed to be updated.

Proposed §321.39(f), Pollution Prevention Plans, substitutes "must" for "shall." The commission proposes to amend subsection (f)(16) by making an antecedent noun agree in number with its precedent nouns; and substituting "that" for "which." In subsection (f)(16)(A), a minor grammatical correction in the choice of indefinite article is proposed; and licensed professional geoscientist is proposed to replace qualified groundwater scientist as one of the three people who may document no significant leakage from a retention structure. In subsection (f)(16)(B), the commission proposes to specify what the documentation must include or show; to correct a minor grammatical error; and to replace licensed professional geoscientist for qualified groundwater scientist as one of the three people who may make the written determination. In subsection (f)(17), the commission proposes to substitute "must" for "shall"; substitute "that" for "which"; correct a minor grammatical error; replace licensed professional geoscientist for qualified groundwater scientist as one of the three people who can make a site-specific assessment; make an antecedent noun agree in number with its precedent noun; and use the correct noun "equivalent" meaning "equal" rather than "equivalency," which means "a condition of equality." In subsection (f)(18), the commission proposes to make a precedent noun agree in number with its antecedent noun; correct a minor grammatical error; and replace licensed professional geoscientist for qualified groundwater scientist as one of the three people who can do a site evaluation every five years.

Proposed §321.55, Protection of Groundwater, substitutes "must" for "shall"; correctly specifies the requirements of paragraphs (1) and (2); and deletes the word "such." In paragraph (2), the commission proposes to substitute "must" for "shall"; delete an unnecessary period; spell out centimeters per second; provide the correct and proper name of the laboratory test to be conducted; and require certification of the pond liner by a licensed professional engineer or a licensed professional geoscientist and that the certification be signed, sealed, and dated

by a licensed professional engineer or a licensed professional geoscientist.

Proposed §321.252, Definitions, amends the introduction of the section by adding the word "when"; deleting the word "shall"; and deleting the phrase "unless the context clearly indicates otherwise." The definition of licensed professional geoscientist is proposed to be added as new paragraph (6) and the remaining paragraphs are proposed to be renumbered accordingly. A corrected reference to Chapter 213 instead of Chapter 313 is proposed in renumbered paragraph (10). Formatting changes are proposed throughout this section to be consistent with other agency rules.

Proposed §321.255(c), Requirements for Containment of Wastes and Pond(s), substitutes "licensed" for "registered" professional engineer; includes a licensed professional geoscientist among the persons who can certify a pond lining; and substitutes "using" for "utilization of." Proposed subsection (c) also requires that the certification be signed, sealed, and dated by a licensed professional engineer or licensed professional geoscientist. Formatting changes are proposed throughout this section to be consistent with other agency rules. A cross-reference is proposed to be corrected in subsection (e).

Proposed §321.271, Definitions, amends the introduction of the section by deleting the word "shall" and the phrase "unless the context clearly indicates otherwise." The definition of licensed professional geoscientist is proposed to be added as new paragraph (14) and the remaining paragraphs are proposed to be renumbered accordingly. Administrative changes, which include formatting, grammatical, and cross-reference corrections, are proposed throughout the section to conform with *Texas Register* and agency requirements.

Proposed §321.274, Ground-water Protection, amends the title to Groundwater Protection, to reflect the accepted usage of "groundwater" as a single, unhyphenated word. Subsection (a) is proposed to be amended to substitute "that" for "which"; substitute "must" for "shall"; and spell out milligrams per liter. The commission proposes to amend subsection (a)(1) to substitute "must" for "shall"; eliminate a superfluous grammatical construction; and reflect the accepted usage of "groundwater" as a single, unhyphenated word. Subsection (a)(1)(E) is proposed to be amended to require that the certification be signed, sealed, and dated by a licensed professional engineer or licensed professional geoscientist; substitute "licensed" for "registered" professional engineer; include a licensed professional geoscientist among the persons who can certify a pond lining; and substitute "using" for "utilization of." The commission proposes to amend §321.274(b) by substituting "using" for "utilizing"; substituting "that" for "which"; specifying the noun antecedent of the demonstrative pronoun; and substituting "must" for "shall." Subsection (b)(1) is proposed to be amended to substitute "must" for "shall"; eliminate a superfluous grammatical construction; and reflect the accepted usage of "groundwater" as a single, unhyphenated word. The commission proposes to amend subsection (b)(1)(D) to require that the certification be signed, sealed, and dated by a licensed professional engineer or licensed professional geoscientist; substitute "licensed" for "registered" professional engineer; include licensed professional geoscientist among the persons who can certify a pond lining; and substitute "using" for "utilization of." Formatting changes are proposed throughout this section to be consistent with other agency rules.

FISCAL NOTE

Doretta Conrad, Analyst in the Budget and Planning Division, has determined that, for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for the agency or any other unit of state government as a result of administration or enforcement of the proposed rules. There will be no fiscal impact to the agency; however, there may be fiscal implications to the agency if the agency elects to reimburse staff for the annual renewal fees. The fees associated with obtaining the professional geoscientist license is \$200 to cover the application and first-year license, and \$150 per year after the first year.

Ms. Conrad also determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed rules will be potentially improved environmental performance by persons regulated by the commission. The proposed rules might impact other state agencies or local governments with staff geologists who need to become licensed under these rules. No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed rules. Additionally, no significant fiscal implications are anticipated for any small or micro-business due to implementation of the proposed rules. The commission has determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the proposed rules is to establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Act. The Act requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by a state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. The proposed rules are not specifically intended to protect the environment or reduce risks to human health. The proposed rules are intended to establish procedures to require that specific reports and necessary data submitted to the commission be produced, signed, sealed, and dated by licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists. Therefore, it is not anticipated that the proposed rules will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that these proposed rules do not meet the definition of major environmental rule.

Furthermore, even if the proposed rulemaking did meet the definition of a major environmental rule, the amendments are not subject to Texas Government Code, §2001.0225, because they do not accomplish any of the four results specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted

by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed amendments to Chapter 321 do not meet any of these requirements. First, there are no federal standards that these rules would exceed. Second, the proposed rules do not exceed an express requirement of state law. Third, there is no delegation agreement that would be exceeded by these proposed rules. Fourth, the commission proposes these rules to allow for the public practice of geoscience in agency procedures in conformance with the Act. Therefore, the commission does not propose the adoption of the rules solely under the commission's general powers.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007. The specific intent of the proposed rules is to establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Act. The proposed rules would substantially advance this stated purpose by requiring that specific reports and necessary data submitted to the commission be produced, signed, sealed, and dated by licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property by burdening private real property, nor restricting or limiting a landowner's right to property, or reducing the value of property by 25% or more beyond that which would otherwise exist in the absence of the proposed rulemaking. These rules simply require that specific portions of applications or necessary data submitted to the commission be produced, signed, sealed, and dated by a qualified professional individual who has demonstrated his or her qualifications by obtaining a license to engage in the public practice of geoscience from the Texas Board of Professional Geoscientists. These proposed rules do not affect any private real property.

There are no burdens imposed on private real property, and the benefits to society are better applications for environmental permits based upon reliable reports and data submitted by qualified licensed professional geoscientists.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or will affect an action and/or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6), and will therefore require

that applicable goals and policies of the CMP be considered during the rulemaking process. The commission has prepared a consistency determination for the proposed rules under 31 TAC §505.22 and found that the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rules include the construction and operation of solid waste treatment, storage, and disposal facilities, and the discharge of municipal and industrial wastewater to coastal waters. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies because the proposed rule changes do not modify or alter standards set forth in existing rules, and do not govern or authorize any actions subject to the CMP. The proposed rulemaking would require a person who prepares and submits geoscientific information to the agency to be a licensed professional geoscientist. The commission invites public comment on the consistency determination of the proposed rules.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., June 16, 2003, and should reference Rule Log Number 2001-051C-312-WS. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

SUBCHAPTER B. CONCENTRATED ANIMAL FEEDING OPERATIONS

30 TAC §§321.32, 321.35, 321.39

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendments implement TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§321.32. *Definitions.*

The following words and terms, when used in this subchapter, [shall] have the following meanings[; unless the context clearly indicates otherwise].

(1)-(13) (No change.)

(14) Flushwater waste handling system--A system in which fresh water [freshwater] or wastewater is recycled or used in transporting waste.

(15)-(19) (No change.)

(20) Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(21) [(20)] Liner--Any barrier in the form of a layer, membrane, or blanket, naturally existing, constructed, or installed to prevent a significant hydrologic connection between liquids contained in retention structures and waters in the state.

(22) [(21)] Major sole-source impairment zone--A watershed that contains a reservoir:

(A) that is used by a municipality as a sole source of drinking water supply for a population, inside and outside of its municipal boundaries, of more than 140,000; and

(B) at least half of the water flowing into which is from a source that, on September 1, 2001, is on the list of impaired state waters adopted by the commission as required by 33 United States Code, §1313(d), as amended:

(i) at least in part because of concerns regarding pathogens and phosphorus; and

(ii) for which the commission, at some time, has prepared and submitted a total maximum daily load standard.

(23) [(22)] Natural Resources Conservation Service (NRCS)--An agency of the United States Department of Agriculture which includes the agency formerly known as the Soil Conservation Service (SCS).

(24) [(23)] New concentrated animal feeding operation (CAFO) [CAFO]--A CAFO which was not authorized under a rule, order, or permit of the commission in effect on August 19, 1998. For the purposes of §321.48 of this title (relating to Regulation of Certain Dairy Concentrated Animal Feeding Operations (CAFOs)), new CAFO means a proposed CAFO, any part of which is located on property not previously authorized by the state to be operated as a CAFO.

(25) [(24)] No discharge--The absence of flow of waste, process generated wastewater, contaminated rainfall runoff, or other wastewater from the premises of the animal feeding operation, except for overflows which result from chronic or catastrophic rainfall events.

(26) [(25)] Nuisance--Any discharge of air contaminant(s) including, but not limited to, odors of sufficient concentration and duration that are or may tend to be injurious to or which adversely affects human health or welfare, animal life, vegetation, or property, or which interferes with the normal use and enjoyment of animal life, vegetation, or property.

(27) [(26)] Open lot--Pens or similar confinement areas with dirt, concrete, or other paved or hard surfaces wherein animals or poultry are substantially or entirely exposed to the outside environment except for small portions of the total confinement area affording protection by windbreaks or small shed-type shade areas. For the purposes of this subchapter, the term open lot is synonymous with the terms dirt lot, or dry lot, for livestock or poultry, as these terms are commonly used in the agricultural industry.

(28) [(27)] Operator--The owner or one who is responsible for the management of a concentrated animal feeding operation [CAFO] or an animal feeding operation subject to the provisions of this subchapter.

(29) [(28)] Permanent odor sources--Those odor sources which may emit odors 24 hours per day. For the purposes of this subchapter, permanent odor sources include, but are not limited to, pens, confinement buildings, lagoons, retention facilities, manure stockpile areas, and solid separators. For the purposes of this subchapter, permanent odor sources shall not include any feed handling facilities, land application equipment, or land application areas.

(30) [(29)] Permittee--Any person issued or covered by an individual permit or order, permit-by-rule, or granted authorization under the requirements of this subchapter.

(31) [(30)] Pesticide--A substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(32) [(31)] Process wastewater--Any process generated wastewater directly or indirectly used in the operation of a concentrated animal feeding operation [CAFO] (such as spillage or overflow from animal or poultry watering systems which comes in contact with waste; washing, cleaning, or flushing pens, barns, manure pits; direct contact swimming, washing, or spray cooling of animals; and dust control), and precipitation which comes into contact with any manure or litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g., milk, meat, or eggs).

(33) [(32)] Process generated wastewater--Any water directly or indirectly used in the operation of a concentrated animal feeding operation [CAFO] (such as spillage or overflow from animal or poultry watering systems which comes in contact with waste; washing, cleaning, or flushing pens, barns, manure pits; direct contact swimming, washing, or spray cooling of animals; and dust control) which is produced as wastewater.

(34) [(33)] Protection zone--The area within the watershed of a sole-source surface drinking water supply that is:

(A) within two miles of the normal pool elevation, as shown on a United States Geological Survey (USGS) 7 1/2-minute quadrangle topographic map, of a sole-source drinking water supply reservoir;

(B) within two miles of that part of a perennial stream that is:

(i) a tributary of a sole-source drinking water supply; and

(ii) within three linear miles upstream of the normal pool elevation, as shown on a USGS 7 1/2-minute quadrangle topographic map, of a sole-source drinking water supply reservoir; or

(C) within two miles of a sole-source surface drinking water supply river, extending three linear miles upstream from the sole-source water supply intake point.

[(34)] Qualified groundwater scientist--A scientist or engineer who has received a baccalaureate or post-graduate degree in natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certification, or completion of accredited university programs that enable that individual to make sound professional judgements regarding groundwater monitoring, contamination fate and transport, and corrective action.

(35)-(42) (No change.)

§321.35. Procedures for Making Application for Registration.

(a) (No change.)

(b) Applicants shall comply with the applicable provisions of §§305.43, 305.44, [305.46,] and 305.47 of this title (relating to Who Applies; Signatories to Applications; [Designation of Material as Confidential;] and Retention of Application Data).

(c) Application for registration under this section shall be made on forms prescribed by the executive director. Except as

provided in §321.33(r) of this title and §321.48 of this title (relating to Regulation of Certain Dairy Concentrated Animal Feeding Operations (CAFOs)), a facility that [which] is not required under federal law to obtain National Pollutant Discharge Elimination System authorization may apply for a state-only registration, which authorizes the discharge or disposal of waste or wastewater into or adjacent to water in the state only in the event of a 25-year, 24-hour rainfall event, or may transfer from an individual permit to [such] a registration in accordance with §321.33(l) of this title. The applicant shall submit an original completed application with attachments and one copy of the application with attachments to the executive director at the headquarters in Austin, Texas, and one additional copy of the application with attachments to the appropriate commission regional office. The completed application must [shall] be submitted to the executive director signed and notarized and with the following information:

(1)-(5) (No change.)

(6) a county general highway map (with graphic scale clearly shown) to identify the relative location of the CAFO and at least a one-mile [one mile] area surrounding the facility;

(7) (No change.)

(8) sections of the pollution prevention plan to be designated by the executive director. Prior to using [utilization of] wastewater retention facilities, documentation of liner certifications, signed, sealed, and dated by a licensed professional engineer or licensed professional geoscientist, shall [must] be submitted (if applicable);

(9) (No change.)

(10) a certification by a Natural Resources Conservation Service (NRCS) engineer, licensed professional engineer, or licensed professional geoscientist [qualified groundwater scientist] documenting the absence or presence of any recharge features identified on any tracts of land owned, operated, or controlled by the applicant and to be used as a part of a CAFO. Documentation[;] by the certifying party must [shall] identify the sources and/or methods used to identify the presence or absence of recharge features. The documentation must [shall] include the method or approach to be used to identify previously unidentified and/or undocumented recharge features that may be discovered during the time of construction. At a minimum, the records and/or maps of the following entities/agencies must [shall] be reviewed to locate any artificial recharge features:

(A)-(C) (No change.)

(D) Texas Commission on Environmental Quality [TNRCC];

(E) (No change.)

(F) previous owner of site, if available; [;] and

(G) on-site inspection of site with an [a] NRCS engineer, licensed professional engineer, or licensed professional geoscientist [qualified groundwater scientist];

(11) where the applicant cannot document the absence of recharge features on the tracts for which an application is being filed, the proposed site plan must [shall] also indicate the specific location of any and all recharge features found on any property owned, operated, or controlled by the applicant under the application as certified by an [a] NRCS engineer, licensed professional engineer, or licensed professional geoscientist [qualified groundwater scientist]. The applicant shall also submit a plan, developed by an [a] NRCS engineer or licensed professional engineer, to prevent impacts on any located recharge feature and associated groundwater formation. The plan [which] may include the following:

(A) (No change.)

(B) submission of a detailed groundwater monitoring plan prepared, certified, signed, sealed, and dated by a licensed professional geoscientist or licensed professional engineer covering all affected facilities and land application areas. At a minimum, the groundwater monitoring plan must ~~shall~~ specify procedures to annually collect a groundwater sample from representative wells, have each sample analyzed for chlorides, nitrates, and total dissolved solids, and compare those values with background values for each well; or

(C) (No change.)

(12)-(15) (No change.)

(d) Each applicant shall pay an application fee as required by §305.53 of this title (relating to Application Fee [Fees]). An annual waste treatment inspection fee is also required of each registrant as required by §305.43 and §305.44 ~~§305.503 and §305.504~~ of this title ~~(relating to Fee Assessment and Fee Payment)~~. An annual Clean Rivers Program fee is also required as required under §21.3 ~~§220.24(d)~~ of this title (relating to Fee Assessment ~~[Water Quality Assessment Fees]~~). No fees under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) shall be required of an applicant for an authorization issued under this section.

(e) Each registrant shall comply with and is subject to the provisions of §§305.61, 305.64, and 305.33 - 305.68 of this title (relating to Applicability; Transfer of Permits; Permit Denial, Suspension, and Revocation; Revocation and Suspension ~~upon~~ ~~[Upon]~~ Request or Consent; Action and Notice on Petition for Revocation or Suspension).

(f)-(g) (No change.)

(h) Registrations issued under §321.37 or §321.47 of this title (relating to Actions ~~Action~~) on Applications for Registration or Initial Texas Pollutant Discharge Elimination System (TPDES) Authorization shall expire five years after the effective date of these amendments (1999), and no new registrations shall be issued after that date. However, if the commission proposes to amend or readopt these rules prior to such expiration date, all registrations shall remain in effect until final commission action on the proposed amendment or readoption. An application for renewal of a registration under this section must be administratively and technically complete, meet all applicable technical requirements of this subchapter, and, except as otherwise provided in paragraphs (1) - (5) of this subsection, be processed according to §321.36 ~~and §321.37~~ of this title (relating to Notice of Application for Registration ~~and Action on Application for Registration~~) and §321.37 of this title. A registration for a facility described in §321.33(a)(2) of this title may be renewed, according to the following procedures.

(1) Except as provided by §305.63(a)(3) of this title (relating to Renewals), an administratively and technically complete application may be granted by the executive director without public notice if it does not propose any other change to the registration as approved. Renewal under this paragraph shall be allowed only if there has been no related formal enforcement action against the facility during the last 36 months of the term of the registration in which the commission has determined that:

(A) a violation occurred that contributed to pollution of surface or groundwater ~~[ground water]~~, or an unauthorized discharge has occurred, or a violation of §101.4 of this title (relating to Nuisance) has occurred, or any violation of an applicable state or federal air quality control requirement has occurred; and

(B)-(C) (No change.)

(2)-(5) (No change.)

§321.39. *Pollution Prevention Plans.*

(a) (No change.)

(b) Where a Natural Resources Conservation Service (NRCS) plan has been prepared for the facility, the pollution prevention plan may refer to the NRCS plan when the NRCS plan documentation contains equivalent requirements for the facility. When the operator uses an ~~[a]~~ NRCS plan as partial completion of the pollution plan, the NRCS plan must be kept on site. Design and construction criteria developed by the NRCS can be substituted for the documentation of design capacity and construction requirements (see subsection (f) of this section) of the pollution prevention plan provided the required inspections logs and water level logs in subsection (f)(3) and (11) of this section are kept with the NRCS plan ~~[Plan]~~. Waste management plans developed by the NRCS can be substituted for the documentation of application rate calculations in subsection (f)(19) and (24) of this section. NRCS Waste Management Plans which have been prepared since January 1, 1989 are considered by the NRCS to contain adequate management practices. To insure the protection of water quality, the NRCS has determined that NRCS plans prepared prior to 1989 must be submitted for renewal with the NRCS ~~[Natural Resources Conservation Service]~~ or a waste management professional before December 1995. NRCS has determined that all plans should be reviewed every five years to insure proper management of wastes.

(c)-(e) (No change.)

(f) The plan must ~~shall~~ include, at a minimum, the following items.

(1)-(15) (No change.)

(16) The operator shall include in the plan, site-specific documentation that no significant hydrologic connection exists between the contained wastewater and waters in the state. Where the operator cannot document that no significant hydrologic connection exists, the ponds, lagoons, and basins of the retention facilities must have liners ~~that~~ ~~[a liner which]~~ will prevent the potential contamination of surface waters and groundwaters.

(A) The operator can document lack of hydrologic connection by either: documenting that there will be no significant leakage from the retention structure; or documenting that any leakage from the retention structure would not migrate to waters in the state. This documentation shall be certified by an ~~[a]~~ NRCS engineer, licensed professional engineer, or licensed professional geoscientist ~~[qualified groundwater scientist]~~ and must include information on the hydraulic conductivity and thickness of the natural materials underlying and forming the walls of the containment structure up to the wetted perimeter.

(B) For documentation of no significant leakage, in-situ materials must, at a minimum, meet the minimum criteria for hydraulic conductivity and thickness as described in this section. Documentation that leakage will not migrate to waters in the state must include maps showing groundwater flow paths, or must show that the leakage enters a confined environment. A written determination by an ~~[a]~~ NRCS engineer, licensed professional geoscientist, or a licensed professional engineer that a liner is not needed to prevent a significant hydrologic connection between the contained wastewater and waters in the state will be considered documentation that no significant hydrologic connection exists.

(17) Site-specific conditions must ~~shall~~ be considered in the design and construction of liners. NRCS liner requirements or liners constructed and maintained in accordance with NRCS design specifications in Appendix 10d of the Agricultural Waste Management Handbook (or its current equivalent) shall be considered to prevent hydrologic connections ~~that~~ ~~[which]~~ could result in the contamination

of waters in the state. Liners for retention structures must [shall] be constructed in accordance with good engineering practices. Where no site-specific assessment has been done by an [a] NRCS engineer, licensed professional engineer, or licensed professional geoscientist [qualified groundwater scientist], the liner must [shall] be constructed to have a hydraulic conductivity [conductivities] no greater than 1×10^{-7} centimeters per second [cm/sec.], with a thickness of 1.5 feet or greater or its equivalent [equivalency] in other materials.

(18) Where a liner is installed to prevent hydrologic connection, the operator must maintain the liner to inhibit infiltration of wastewaters. Liners must [shall] be protected from animals by fences or other protective devices. No tree [trees] shall be allowed to grow within the potential distance of the tree's root zone. Any mechanical or structural damage to the liner must [shall] be evaluated by an [a] NRCS engineer or a licensed professional engineer within 30 days of the damage. Documentation of liner maintenance must [shall] be kept with the pollution prevention plan. The operator shall have an [a] NRCS engineer, licensed professional engineer, or licensed professional geoscientist [qualified groundwater scientist] review the documentation and do a site evaluation every five years. If notified by the executive director that significant potential exists for the contamination of waters in the state or drinking water, the operator shall install a leak detection system or monitoring well(s) in accordance with that notice. Documentation of compliance with the notification must be kept with the pollution prevention plan, as well as all sampling data. In the event monitoring well(s) are required, the operator must sample each monitor well annually for nitrate as nitrogen, chloride, and total dissolved solids using the methods outlined in the pollution prevention plan, and compare the analytical results to the baseline data. If a 10% deviation in concentration of any of the sampled constituents is found, the operator must notify the executive director within 30 days of receiving the analytical results. Data from any monitoring wells must be kept on site for three years with the pollution prevention plan. The first year's sampling shall be considered the baseline data and must be retained on site for the life of the facility unless otherwise provided by the executive director.

(19)-(30) (No change.)

(31) Operators submitting applications for renewal or expansion of existing facilities authorized under this subchapter to utilize a playa lake as a wastewater retention structure shall within 90 [ninety (90)] days of the effective date of the renewal, submit a groundwater monitoring plan to the Agriculture Section, Water Quality Division of the Texas [Natural Resource Conservation] Commission on Environmental Quality. At a minimum, the groundwater monitoring plan shall specify procedures to annually collect a groundwater sample from each well providing water for the facility, have each sample analyzed for chlorides and nitrates, and compare those values to background values for each well.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-0348

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SUBCHAPTER C. MEAT PROCESSING

30 TAC §321.55

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendment implements TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§321.55. Protection of Groundwater.

Any wastewater holding facility must [shall] conform to the requirements for seepage control specified [enumerated] in paragraphs (1) and (2) of this section. Any [such] facility in an area underlain by clean sands, fractured limestone, or other strata with exceptionally high permeability may be subjected to additional seepage control requirements.

(1) (No change.)

(2) Permeability data. Permeability tests may be required to show that pond liners are adequately impermeable to prevent excessive seepage. The acceptable seepage rate from ponds must [shall] be less than 0.1 acre-foot of wastewater per surface acre of pond per year. The acceptable permeability coefficient must [shall] be equal to or less than 1.0×10^{-7} centimeters per second [cm/sec.] at one foot of head and with one foot of permeable material or the equivalent or better thereof. The permeability coefficient must [shall] be determined by constant head laboratory permeability [permeameter] tests. The registrant shall furnish certification, signed, sealed, and dated by a licensed professional engineer or licensed professional geoscientist, that the completed pond lining meets the appropriate criteria described in this section prior to using the facilities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER N. HANDLING OF WASTES FROM COMMERCIAL FACILITIES ENGAGED IN LIVESTOCK TRAILER CLEANING

30 TAC §321.252, §321.255

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and

Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendments implement TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§321.252. *Definitions.*

The following words and terms, when used in this subchapter, [shall] have the following meanings [unless the context clearly indicates otherwise].

(1) Agronomic rate [Rate]--The wastewater application rate designed:

(A) (No change.)

(B) to minimize the amount of nitrogen in the wastewater that passes below the root zone of the crop or vegetation grown on the land to the groundwater [ground water].

(2) Edwards Aquifer--That portion of an arcuate belt of porous, water-bearing limestones composed of the Comanche Peak, Edwards, and Georgetown formations trending from west to east to northeast through Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties. (See Chapter 213 [343] of this title (relating to Edwards Aquifer).)

(3) Existing facilities [Facilities]--Commercial livestock trailer cleaning facilities in active operation prior to January 5, 1996.

(4) Facility wastewater [Wastewater]--Any livestock trailer cleaning wastewater collected for treatment and disposal at a commercial facility, in accordance with the requirements of this subchapter.

(5) Grab sample [Sample]--An individual sample collected in less than 15 minutes.

(6) Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(7) [(6)] Livestock trailer cleaning facilities [Trailer Cleaning Facilities]--Facilities which provide means to remove, contain, treat, and dispose of wastes from livestock trailers.

(8) [(7)] New facilities [Facilities]--Commercial livestock trailer cleaning facilities not defined in this section as existing facilities.

(9) [(8)] Publicly owned treatment works (POTW) [Owned Treatment Works or "POTW"]--A treatment works owned by a state or municipality, which includes any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment. This term also means the municipality which has jurisdiction over indirect discharges to and discharges from such a treatment works.

(10) [(9)] Recharge zone [Zone]--Generally, that area where the Edwards and associated limestones crop out in Kinney, Uvalde, Medina, Bexar, Comal, Hays, and Williamson Counties and the outcrops of other formations in proximity to the Edwards limestone, where faulting and fracturing may allow recharge of the surface waters to the Edwards Aquifer, and the area in Uvalde County within 500 feet of the Nueces, Dry Frio, and Sabinal Rivers downstream from the northern Uvalde County line to the recharge zone as otherwise delineated on official maps located in the offices of the commission and the Edwards Underground Water District. (See Chapter 213 [343] of this title (relating to Edwards Aquifer).)

(11) [(40)] Registrant--An individual or entity authorized by the executive director to dispose of wastewater from commercial facilities associated with the handling of waste from livestock trailer cleaning under the terms and requirements of this subchapter.

(12) [(41)] Storm water--Storm water runoff, snow melt runoff, surface runoff, and drainage.

§321.255. *Requirements for Containment of Wastes and Pond(s).*

(a) (No change.)

(b) All pond(s) used for the retention of treated or untreated wastewater shall be adequately lined to control seepage. The following methods of pond lining are acceptable.

(1) In-situ clay soils or placed and compacted clay soils meeting the following requirements:

(A) more [More] than 30% passing a Number [No.] 200 mesh sieve;

(B) liquid [Liquid] limit greater than 30%;

(C) plasticity [Plasticity] index greater than 15;

(D) a [A] minimum thickness of two feet;

(E) permeability [Permeability] equal to or less than 1×10^{-7} centimeter per second [cm/sec] (the requirements described in this subparagraph apply only to new ponds constructed or modified after the effective date of these regulations); and

(F) soil [Soil] compaction will be 95% standard proctor density at optimum moisture content (the requirements described in this subparagraph apply only to new ponds constructed or modified after the effective date of these regulations).

(2)-(3) (No change.)

(c) The registrant shall furnish certification, signed, sealed, and dated by a Texas licensed professional engineer [Registered Professional Engineer] or licensed professional geoscientist, that the completed pond lining meets the appropriate criteria described in this section prior to using [utilization of] the facilities. The certification must [shall] be sent to the agency's Wastewater Permits Section (MC 148) and a copy to the appropriate agency regional office [Regional Office].

(d) (No change.)

(e) All waste containment structures or ponds must be constructed to comply with minimum distance requirements specified in §290.41 of this title (relating to Water Sources) and with the minimum distance requirements specified in 16 TAC §76.1000 [§338.43 of this title] (relating to Technical Requirements - Location and Standards of Completion for Wells [Location of Dewatering, Monitoring, Domestic, Industrial, Injection and Irrigation Wells]).

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER O. DISCHARGES FROM AQUACULTURE PRODUCTION FACILITIES

30 TAC §321.271, §321.274

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendments implement TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§321.271. *Definitions.*

The following words and terms, when used in this subchapter, [shall] have the following meanings. [unless the context clearly indicates otherwise:]

(1)-(2) (No change.)

(3) Best management practices [~~Management Practices~~] (BMP)--Schedule of activities, maintenance procedures, and other management practices to prevent or reduce the pollution of water in the state. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, drainage from raw material storage, or the abatement of nuisance odors and conditions. BMPs are those measures that are reasonable and necessary to achieve a performance standard that protects and maintains air and water quality standards as well as existing and potential uses of groundwater.

(4) Closed ponds--Ponds (or lakes) without a mechanism to manipulate water levels (except for emergency spillways and other similar ~~nonmechanical~~ [~~non-mechanical~~] structures) or those ponds that are operated such that drawdowns are not allowed. If the use of ~~ground-water~~ [~~ground-water~~] wells or the diversion of surface water results in dry-weather discharges, such ponds are not defined as closed ponds.

(5) Coastal zone--That area along the Texas coast of the Gulf of Mexico as depicted in this definition. The boundary includes areas within the following Texas counties: Cameron, Willacy, Kenedy, Kleberg, Nueces, San Patricio, Aransas, Refugio, Calhoun, Victoria, Jackson, Matagorda, Brazoria, Galveston, Harris, Chambers, Liberty, Jefferson, and Orange.

Figure: 30 TAC §321.271(5) (No change.)

(A)-(D) (No change.)

(E) The seaward boundary is delineated as: That line marking the seaward limit of Texas title and ownership under the Submerged Lands Act (43 United States Code (USC), §§1301 *et seq.* [§1301 *et seq.*]).

(F) The boundary with the Republic of Mexico is delineated as: The boundary begins at a point three marine leagues into the Gulf of Mexico where the line marking the seaward limit of Texas title and ownership under the Submerged Lands Act (43 USC, §§1301 *et seq.* [§1301 *et seq.*]) intersects the international boundary between the United States and the Republic of Mexico; thence it continues in a westerly direction along the international border with the Republic of Mexico until it meets the International Toll Bridge in Brownsville.

(6)-(9) (No change.)

(10) Edwards Aquifer--As defined under §213.3 of this title (relating to Definitions [~~the Edwards Aquifer~~]), that portion of an arcuate belt of porous, water-bearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Formation, and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut Formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

(11) Edwards Aquifer Recharge Zone--Generally, that area where the stratigraphic units constituting the Edwards Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such on official maps located in the offices of the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality and the appropriate underground water conservation district.

(12)-(13) (No change.)

(14) Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(15) [(44)] mg/L [~~mg/L~~]-Abbreviation for milligrams per liter.

(16) [(45)] New facilities--Aquaculture production facilities not in active operation and that have not discharged wastewater during the calendar year previous to the effective date of this rule.

(17) [(46)] Nuisance--Any emission of air contaminant(s), including but not limited to odors, that is of sufficient concentration and duration so as to be injurious or potentially injurious to human health or welfare, animal life, vegetation, or property, or which interferes with the normal use and enjoyment of animal life, vegetation, or property.

(18) [(47)] Operator--Any person or entity in control of or having responsibility for the daily operation of an aquaculture production facility.

(19) [(48)] Pond bottom sludges--Accumulations of silt, soils, and other matter in the bottom of ponds.

(20) [(49)] Process controls--Structures, technologies, and practices used [~~utilized~~] to control the rate, volume, or quality of a discharge.

(21) [(20)] Production pond--Earthen ponds, raceways, fabricated tanks, or similar structures utilized in conjunction with the propagation or rearing of aquatic species.

(22) [(21)] Production--Weight of aquatic species as measured following harvest and prior to processing.

(23) [(22)] Publicly owned treatment works (POTW)--A treatment works owned and operated by a state or municipality which includes any device or systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment. This term also means the municipality that has jurisdiction over indirect discharges to, and discharges from, such a treatment works.

(24) [(23)] Registrant--An individual or entity authorized by the executive director to discharge wastewater from aquaculture facilities under the terms and requirements of a registration issued under [pursuant to] this subchapter.

(25) [(24)] Shrimp research facilities--Facilities whose primary purpose is the scientific research of shrimp aquaculture methods, disease control, waste control, wastewater treatment technology, and similar subjects.

(26) [(25)] Tailwater control--Diked or bermed area, pond, or other similar structure placed down-gradient of an irrigation site and designed to prevent off-site runoff or runoff to waters in the state.

(27) [(26)] Total residual chlorine--Chlorine concentration of the wastewater when discharged.

(28) [(27)] Warm water aquatic species--All aquatic species except those in the family Salmonidae (trout and salmon).

(29) [(28)] Wastewater management pond--Any structure used for containment, detainment, or treatment of wastewater, including settling ponds and canals used [utilized] to transport wastewater from the production pond to a settling pond or discharge point.

(30) [(29)] Waste management unit--Any structure used for containment, detainment, storage, processing, or treatment of solid wastes.

(31) [(30)] Wastewater--Water that is a result of the following operations:

- (A) propagation, rearing, or transportation of aquatic species;
- (B) washdown, cleaning, and flushing of fabricated tanks, raceways, ponds, and other containment structures;
- (C) washdown and cleaning of equipment; or
- (D) washing, treating, or any other direct contact with aquatic species.

(32) [(31)] 25-Year, 24-Hour rainfall event--The maximum rainfall event with a probable recurrence interval of once in 25 years (4% [four percent] probability of occurrence in a given year), with a duration of 24 hours, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States," May 1961, and subsequent amendments, or equivalent information developed therefrom.

§321.274. *Groundwater* [Ground-Water] Protection.

(a) Wastewater management ponds and production ponds that contain water with a total dissolved solids content in excess of 2,000 milligrams per liter (mg/L) [mg/L] and all wastewater management ponds and production ponds that [which] are located within the Edwards Aquifer Recharge Zone, regardless of total dissolved solids content, must [shall] conform to the following requirements.

(1) All ponds whether constructed of earthen or other impervious material must [shall] be designed and constructed [so as] to prevent groundwater [ground-water] contamination.

(A) Soils used for pond lining shall be free from foreign material such as paper, brush, trees, and large rocks. All soil liners must be comprised of compacted material, at least 24 inches [24-inches] thick, compacted in lifts not greater than six inches thick and compacted to 95% of Standard Proctor Density. Soil liners must meet the following particle size gradation and Atterberg limits: 30% or more passing a Number [number] 200 mesh sieve; a liquid limit of 30% or greater; and a plasticity index of 15 or greater and a permeability less than, or equal to, 1×10^{-7} centimeters per second (cm/sec) [cm/sec].

(B) (No change.)

(C) In-situ liners at least 24 inches [24-inches] thick and meeting a permeability less than, or equal to, 1×10^{-7} cm/sec are acceptable alternatives to the requirements of subparagraphs (A) and (B) of this paragraph.

(D) (No change.)

(E) Signed, sealed, and dated certification [Certification] shall be furnished by a Texas licensed professional engineer or licensed professional geoscientist [Registered Professional Engineer] that the pond lining meets the appropriate criteria prior to using [utilization of] the facilities.

(2) (No change.)

(b) Production ponds and wastewater management ponds using [utilizing] water that [which] will not exceed a total dissolved solids concentration of 2,000 mg/L and [mg/L] are not located within the Edwards Aquifer Recharge Zone, and those ponds that [which] are not constructed in accordance with subsection (a) of this section must [shall] conform to the following requirements.

(1) All ponds whether constructed of earthen or other impervious materials must [shall] be designed and constructed [so as] to prevent groundwater [ground-water] contamination.

(A) Soils used for pond lining shall be free from foreign material such as paper, brush, trees, and large rocks. All soil liners must be of compacted material, at least 24 inches [24-inches] thick, compacted in lifts no great than six inches and with material that has a permeability less than, or equal to, 1×10^{-4} cm/sec.

(B) (No change.)

(C) In-situ liners at least 24 inches [24-inches] thick meeting a permeability less than, or equal to, 1×10^{-4} cm/sec are acceptable alternatives to the requirements of subparagraphs (A) and (B) of this paragraph.

(D) Signed, sealed, and dated certification [Certification] shall be furnished by a Texas licensed professional engineer or licensed professional geoscientist [Registered Professional Engineer] that the pond lining meets the appropriate criteria prior to using [utilization of] the facilities.

(2) (No change.)

(c) An alternative method of pond lining, which will meet the performance standards provided by this section, may be utilized with the prior written approval of the executive director. Suitable materials for alternate pond linings may include impervious materials such as flexible membrane linings, asphalt-sealed fabric liners, and bentonite sealants. Installation of bentonite sealants and flexible membrane linings shall be in accordance with a detailed plan which meets the conservation practice standard and specification code 521, "Pond Sealing or Lining," of the United States Department of Agriculture [USDA] Natural Resources Conservation Service.

(d) A specific exemption from the groundwater [ground-water] protection requirements of this section may be obtained from the executive director if, after the review of data submitted by the applicant, the executive director determines containment of the water in a production pond or wastewater management pond is not necessary, considering:

(1) soil and geologic data, and groundwater [ground-water] data, including its quality, uses, quantity, and yield; and

(2) adequate demonstration that impairment of groundwater [ground-water] for its actual or potential use will be prevented.

(e) Earthen ponds in existence on the date this subchapter becomes effective shall be exempt from the requirements of subsections (a), (b), or (c) of this section provided that:

(1) (No change.)

(2) operation of such ponds does not cause an adverse impact upon groundwater [ground-water].

(f) Whenever the discharge of waste or wastewater into groundwater [ground-water] occurs or is likely to occur which could cause degradation of groundwater [ground-water] quality, the executive director may require compliance with the provisions of subsections (a), (b), and (c) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 85. ADMISSION AND PLACEMENT

SUBCHAPTER B. PLACEMENT PLANNING

37 TAC §85.25

The Texas Youth Commission (TYC) proposes an amendment to §85.25, concerning Minimum Length of Stay. The amendment to the section will update a reference due to the repeal of another rule. The requirements relating to length of stay for sentenced offenders will now be found in §85.33.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the use of accurate and current rules among all TYC facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order a youth's confinement under conditions it believes best designed for the youth's welfare and the interests of the public.

The proposed amendment affects the Human Resource Code, §61.034.

§85.25. Minimum Length of Stay.

(a) (No change.)

(b) Applicability.

(1) Except where specifically named, requirements herein do not apply to sentenced offenders. See (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders) [(GAP) §85.37 of this title (relating to Sentenced Offender Disposition)] for additional information. The Texas Youth Commission (TYC) complies with the orders of the committing court regarding sentences for youth sentenced to commitment to TYC.

(2) (No change.)

(c) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Robinson

Executive Director

Texas Youth Commission

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37 TAC §85.29

The Texas Youth Commission (TYC) proposes an amendment to §85.29, concerning Program Completion and Movement of Other Than Sentenced Offenders. The amendment to the section will update a reference due to the repeal of another rule. The amendment will also specify that a youth will not be eligible for transition or release under this policy unless the youth has not committed a category 1 rule violation within 90 days of the transition/release review.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the use of accurate and current rules among all TYC facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order a youth's confinement under conditions it believes best designed for the youth's welfare and the interests of the public.

The proposed amendment affects the Human Resource Code, §61.034.

§85.29. *Program Completion and Movement of Other Than Sentenced Offenders.*

(a) (No change.)

(b) Applicability.

(1) (No change.)

(2) This rule does not apply to sentenced offenders. See (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders [and §85.37 of this title (relating to Sentenced Offender Disposition)]).

(3) (No change.)

(c) - (d) (No change.)

(e) Program Completion Criteria and Movement.

(1) Youth Whose Classifying Offense is Type A Violent Offender.

(A) Criteria. A type A violent offender youth will be eligible for transition/release to a placement of less than high restriction when the following criteria have been met:

(i) no category I rule violations within 90 days prior to the transition/release review; and

(ii) [(+)] completion of the Minimum Length of Stay (MLS); and

(iii) [(+)] completion of phase 4 on all three components of resocialization.

(B) (No change.)

(2) Youth Whose Classifying Offense is Other Than Type A Violent Offender.

(A) Criteria. A youth other than a type A violent offender youth will be eligible for transition/release to a placement of less than high restriction when the following criteria have been met:

(i) no category I rule violations within 90 days prior to the transition/release review; and

(ii) [(+)] completion of minimum length of stay requirements;

(I) completion except three months for transition to medium restriction for youth assigned a classification MLS of less than 12 months and is low risk to fail to complete program requirements at medium restriction placement; or

(II) completion except six months for transition to medium restriction for youth assigned a classification MLS of 12 or more months and is low risk to fail to complete program requirements at medium restriction placement; or

(III) completion of the entire MLS for release to home level restriction; and

(iii) [(+)] completion of phase requirements;

(I) phase 3 on all three components of resocialization for transition to medium restriction (for youth classified on or

after January 1, 1996), (not applicable to youth in contract placements); and

(II) phase 4 on all three components of resocialization for release to home level restriction (for youth classified on or after January 1, 1996), (not applicable to youth in contract placements).

(B) (No change.)

(3) (No change.)

(f) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Robinson

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6014



37 TAC §85.33

The Texas Youth Commission (TYC) proposes an amendment to §85.33, concerning Program Completion and Movement of Sentenced Offenders. The amendment to the section will update terminology, add criteria for military enlistment for certain youth on parole, and clarify the procedures for transfer from TYC to TDCJ.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be efficient and timely release or transfer of eligible TYC youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.081 and §61.084, which provide the Texas Youth Commission with the authority to release under supervision youth in its custody and to terminate control pursuant to applicable state law.

The proposed amendment affects the Human Resource Code, §61.034.

§85.33. *Program Completion and Movement of Sentenced Offenders.*

(a) - (b) (No change.)

(c) Explanation of Terms Used.

(1) - (4) (No change.)

(5) Type [Category] 1 offenses--The offenses, specifically the commission, attempted commission, conspiracy to commit, solicitation, solicitation of a minor to commit, or engaging in organized criminal activity to commit: murder, capital murder, sexual assault, or aggravated sexual assault, the commission of which was on or after January 1, 1996, and for which a youth has been given a determinate sentence.

(6) Type [Category] 2 offenses--The offenses, except type [category] 1 offenses, committed on or after January 1, 1996, for which a youth has been given a determinate sentence.

(d) General Restrictions. Due to the nature of determinate sentences, some rules governing the classification, placement, release, transition, parole status, and disciplinary movement of sentenced offenders must be applied differently. Specifically:

(1) Classification. A youth classified at commitment as a sentenced offender shall retain a sentenced offender classification as long as the youth remains under the jurisdiction of TYC as a result of that commitment. The offense for which the youth received the determinate sentence will remain the youth's classifying offense until the sentence has expired even if the youth's TYC parole is revoked following a Level I hearing. See (GAP) §85.23 of this title (relating to Classification).

(2) (No change.)

(e) Program Completion Processes.

(1) - (3) (No change.)

(4) Progress toward successful completion of criteria shall be evaluated by the Special Services Committee six (6) months after admission to TYC, [and] when the minimum period of confinement is complete, on or about the youth's 20th birthday, and at other times as requested by the Committee. The review will be documented on the Review of Progress Toward Successful Completion of Release Criteria for Sentenced Offenders form, CCF-155.

(A) - (B) (No change.)

(5) (No change.)

(f) Youth sentenced to commitment in the Texas Youth Commission (TYC) for offenses committed on or after January 1, 1996.

(1) General Requirements.

(A) - (F) (No change.)

(G) Military Enlistment. A sentenced offender may be allowed to enlist in the military while on TYC Parole if certain conditions are met. A sentenced offender who is accepted for enlistment by the military will not be discharged from the determinate sentence until the sentence is complete. His/her TYC parole supervision will be conducted via phone calls, letters and through face-to-face contacts (when possible) until the sentence is completed. The following conditions must be met:

(i) The youth must be able to complete his/her sentence prior to his/her 21st birthday; and

(ii) The youth must have served at least 12 months consecutively on TYC parole prior to the enlistment date; and

(iii) The youth must have been assigned to the minimum level of parole supervision for at least three (3) months consecutively prior to the enlistment date; and

(iv) The youth must have completed the parole phase of resocialization prior to the enlistment date; and

(v) The youth must have no more than six (6) months left to serve on the sentence on the enlistment date; and

(vi) The youth must reside in Texas at the time of enlistment.

(2) Program Completion Criteria and Movement.

(A) Youth Whose Classifying Offense is a Type [Category] 1 Offense.

(i) Criteria. A type [category] 1 sentenced offender youth will be eligible for transition/release to a placement of less than high restriction when the following criteria have been met:

(I) no category I rule violations within 90 days prior to the transition/release review; and

(II) [(H)] completion of the minimum period of confinement, except as provided in clause (iii) of this subparagraph; and

(III) [(H)] completion of phase 4 [on all three components of] resocialization goals.

(ii) Procedure. The release of a qualified youth from a high restriction facility to either medium restriction or home level restriction may occur as follows:

(I) Staff must develop a release plan that identifies risk factors and addresses [is adequate to ensure] public safety and positive reintegration. Staff must also develop a release packet of information.

(II) - (X) (No change.)

(iii) (No change.)

(B) Youth Whose Classifying Offense is a Type [Category] 2 Offense.

(i) Criteria. A type [category] 2 sentenced offender youth will be eligible for transition/release to a placement of less than high restriction when the following criteria have been met:

(I) no category I rule violations within 90 days prior to the transition/release review; and

(II) [(H)] completion of the minimum period of confinement; and

(III) [(H)] completion of phase 4 resocialization goals. [requirements:]

{(-a-) phase 3 on all three components of resocialization for transition to medium restriction; or}

{(-b-) phase 4 on all three components of resocialization for release to home level restriction.}

(ii) Procedure. The release of a qualified youth from a high restriction facility to either medium restriction or home level restriction may occur as follows:

(I) Staff must develop a release plan that identifies risk factors and addresses [is adequate to ensure] public safety and positive reintegration. Staff must also develop a release packet of information.

(II) - (VII) (No change.)

(C) (No change.)

(3) Transfer From TYC High Restriction To TDCJ, Institution Division. Transfer from a high restriction facility to the Texas Department of Criminal Justice, Institution Division (TDCJ-ID) may occur as described in this paragraph.

(A) (No change.)

(B) Criteria For Youth Whose Parole Has Been Revoked. A transfer shall occur if ordered by the juvenile court. TYC may request a juvenile court hearing for a youth whose parole has been revoked and the following criteria have been met:

(i) (No change.)

~~[(ii) youth's parole was revoked for:]~~

~~[(I) felony, Class A misdemeanor, or a high risk offense; or]~~

~~[(II) any other violation which resulted in placement in an intermediate sanction program at which the youth has failed to progress; and]~~

~~[(ii) [(iii)] youth has not completed his/her sentence; and~~

~~[(iii) [(iv)] youth's conduct indicates that the welfare of the community requires [require] the transfer.~~

(C) Criteria For Other Youth. A transfer shall occur if ordered by the juvenile court. TYC may request a juvenile court hearing for any other youth if the following criteria have been met:

(i) (No change.)

(ii) youth has spent at least six (6) months in a high restriction facility; and

(iii) (No change.)

(iv) youth has met at least one (1) of the following behavior criteria:

(I) (No change.)

(II) youth persistently has committed category I rule violations (on three (3) or more occasions); or

(III) youth has engaged in chronic disruption of program (five (5) security admissions or extensions in one (1) month or ten (10) in three (3) months); or

(IV) (No change.)

(v) - (vi) (No change.)

(D) (No change.)

(4) Transfer From TYC High or Medium Restriction To TDCJ, Parole Division. Transfer from a medium or high restriction facility to the TDCJ, Parole Division (TDCJ-PD) shall occur (court approval is not required) based on the youth's age as follows.

(A) Age 19 Factor.

(i) Criteria. A youth who reached age 19 while in a high restriction facility will be transferred to (TDCJ-PD) ~~[TDCJ, Parole Division]~~ when he becomes eligible for parole release. A youth who reached the age of 19 while in a high restriction facility and was released to TYC medium restriction will be maintained on institutional status pending the transfer to TDCJ-PD, but cannot be returned to a TYC high restriction facility without a Level I hearing.

(ii) Procedure.

(I) Staff must develop a release plan that identifies risk factors and addresses ~~[is adequate to ensure]~~ public safety and positive reintegration. The plan should reflect communication with the department of sentenced offender disposition [a TDCJ parole officer] regarding available resources. Staff must develop a release packet of information.

(II) - (IV) (No change.)

(V) The administrator of sentenced offender disposition will review the release packet and other supplemental information including Incident Reports, delinquent history, chronological entries, phase progression reports, and youth discipline/movement records to determine and ensure compliance with agency policy regarding release criteria and sufficiency of the release plan ~~[and submit the packet requesting transfer of the offender to TDCJ, Parole Division. Within 90 days of receipt, TDCJ will process the information and forward to the Texas Board of Pardons and Paroles who will set the conditions for release. On receipt of the conditions, the administrator of sentenced offender disposition will insert the conditions into the release packet]~~ and forward the packet to the juvenile corrections department in central office.

(VI) - (IX) (No change.)

(X) Upon notification of release approval, the TYC/TDCJ liaison will submit the packet requesting transfer of the offender to TDCJ-PD. Within 90 days of receipt, TDCJ will process the information and forward to the Texas Board of Pardons and Paroles who will set the conditions for release. On receipt of the conditions, the TYC/TDCJ liaison will notify the sending facility of the parole conditions and coordinate the release process.

(XI) ~~[(X)]~~ The final arrangements for the transfer are made by the department of sentenced offender disposition. The TYC/TDCJ liaison [administrator of the department of sentenced offender disposition] will contact TDCJ-PD and the superintendent/quality assurance administrator [TDCJ, Parole Division] to confirm the transfer date. TDCJ personnel will serve the Order of Transfer in person on that day, at which time the sentenced offender youth is discharged from the TYC and transferred to the TDCJ-PD [TDCJ, Parole Division].

(B) At Age 21.

(i) Criteria.

(I) At age 21, a youth who was sentenced for any offense other than capital murder and who has not completed the sentence will be transferred to TDCJ-PD ~~[TDCJ, Parole Division]~~.

(II) At age 21, a youth sentenced for capital murder, who has not completed the sentence and who has not been transferred to TDCJ or released under supervision (movement from high restriction) by juvenile court order will be transferred to:

(-a-) TDCJ-ID ~~[TDCJ Institution Division]~~, if he has not completed the 10-year minimum confinement period under paragraph (f)(3) of this subsection; or

(-b-) TDCJ-PD ~~[TDCJ Parole Division]~~, if he has completed the 10-year minimum confinement period.

(ii) Procedure.

(I) Prior to 90 days before the youth's 21st birthday, staff must develop a ~~release [transition]~~ plan that identifies risk factors and addresses public safety and positive reintegration. The plan should reflect communication with the department of sentenced offender disposition [a TDCJ parole officer] regarding available resources. Staff must develop a packet requesting transfer of the offender to TDCJ-PD.

(II) (No change.)

(III) The TYC/TDCJ liaison [administrator of sentenced offender disposition] will review the documentation and submit to TDCJ-PD [TDCJ, Parole Division]. Within 90 days of receipt, TDCJ will process the information and forward to the Texas

Board of Pardons and Paroles who will set the conditions for release. On receipt of the conditions the TYC/TDCJ liaison [~~administrator of sentenced offender disposition~~] will notify the superintendent and/or quality assurance administrator of the parole conditions and coordinate the release process.

(IV) The final arrangements for the transfer are made by the department of sentenced offender disposition. The TYC/TDCJ liaison [~~The superintendent/quality assurance administrator will contact the department of sentenced offender disposition who~~] will contact the TDCJ-PD and the parole supervisor [~~TDCJ, Parole Division~~] to confirm the transfer date (to occur on or about the youth's 21st birthday). TDCJ personnel will serve the Order of Transfer in person on that day, at which time the sentenced offender youth is discharged from TYC and transferred to TDCJ-PD [~~TDCJ, Parole Division~~].

(5) Transfer From TYC Home Parole to TDCJ, Parole Division.

(A) Criteria. Transfer from TYC parole at home level restriction to TDCJ-PD [~~TDCJ, Parole~~], shall occur (court approval not required) at age 21 if the youth has not completed his/her sentence.

(B) Procedure.

(i) Prior to 90 days before the youth's 21st birthday, the parole/quality assurance supervisor must develop a summary of TYC adjustment and recommendations for a continuing parole plan. The plan should reflect communication with the department of sentenced offender disposition [a ~~TDCJ parole officer~~] regarding available resources. Staff must develop a packet requesting transfer of the offender to TDCJ-PD.

(ii) (No change.)

(iii) The TYC/TDCJ liaison [~~administrator of sentenced disposition~~] will review the documentation and submit to TDCJ-PD [~~TDCJ, Parole Division~~]. Within 90 days of receipt, TDCJ will process the information and forward to the Texas Board of Pardons and Paroles who will set the conditions for release. On receipt of the conditions the administrator of sentenced offender disposition will notify the parole/quality assurance supervisor [~~superintendent and/or quality assurance administrator~~] of the conditions and coordinate the transfer process.

(iv) The TYC/TDCJ liaison will contact the parole/quality assurance supervisor [~~The parole/quality assurance supervisor will contact the department of sentenced offender disposition~~] and TDCJ-PD [~~TDCJ, Parole Division~~] to confirm the transfer date (on or about the youth's 21st birthday), at which time the youth will be discharged from TYC and transferred to TDCJ-PD [~~TDCJ, Parole Division~~].

(g) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Robinson

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6014

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37 TAC §85.37

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Youth Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Youth Commission (TYC) proposes the repeal of §85.37, concerning Sentenced Offender Disposition. The repeal of the section is necessary because the policy governing transition and release procedures for sentenced offenders is now included in §85.33, concerning Program Completion and Movement of Sentenced Offenders.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. McCullough also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the efficient and timely transition and release of eligible youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. No private real property rights are affected by adoption of this repeal.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The repeal is proposed under the Human Resources Code, §61.084, which provides the Texas Youth Commission with the authority to discharge eligible youth from its custody pursuant to applicable state law.

The proposed repeal affects the Human Resource Code, §61.034.

§85.37. *Sentenced Offender Disposition.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Executive Director

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CHAPTER 87. TREATMENT

SUBCHAPTER A. PROGRAM PLANNING

37 TAC §87.1

The Texas Youth Commission (TYC) proposes an amendment to §87.1, concerning Case Planning. The amendment to the section will delete a reference to another rule which is being repealed.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the

section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the use of accurate and current rules among all TYC facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.076, which provides the Texas Youth Commission with the authority to require youth in its care to participate in correctional training.

The proposed amendment affects the Human Resource Code, §61.034.

§87.1. Case Planning.

(a) (No change.)

~~[(b) **Applicability.** The Individualized Case Plan (ICP) for sentenced offenders is developed in accordance with guidelines of this rule as far as possible and within the restrictions of (GAP) §85.37 of this title (relating to Sentenced Offender Disposition).]~~

(b) ~~[(e)]~~ Definitions.

(1) Case Management System--The standardized process used throughout the Texas Youth Commission (TYC) ~~[(TYC)]~~ to ensure that each youth receives fair and appropriate attention and that each youth experiences treatment based on individually identified needs and strengths.

(2) Individual Case Plan ~~(ICP)~~--The individualized plan for each youth that assesses a youth's needs and strengths, identifies objectives with specific strategies to address both needs and strengths, and is reviewed and adjusted as the youth progresses or as new needs are identified. A document by the same title is used to record and maintain the plan.

(3) Primary Service Worker (PSW)--The generic title given to persons at each TYC program who are assigned the primary responsibility for the case work for individual youth and for the administration of the case management system.

~~[(c) **[(d)]** An ICP will be developed with and for each youth by the PSW [primary service worker]. The plan will be periodically updated. The plan will be developed in accordance with the resocialization program and identified needs and must specify measurable objectives, expected outcomes and a means to evaluate progress. See (GAP) §87.3 of this title (relating to Resocialization Program).~~

~~[(d) **[(e)]** The ICP will be initiated during the assessment process.~~

~~[(e) **[(f)]** the ICP development shall include long and short-term objectives and shall be developed with the youth and family when possible.~~

~~[(f) **[(g)]** Objectives must be written so that they may be achieved within a period of time no longer than the required minimum length of stay or the expected length of stay at each program.~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Robinson

Executive Director

Texas Youth Commission

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CHAPTER 95. YOUTH DISCIPLINE

SUBCHAPTER A. DISCIPLINARY PRACTICES

37 TAC §95.7

The Texas Youth Commission (TYC) proposes an amendment to §95.7, concerning Reclassification Consequence. The amendment to the section will delete a reference to another rule which is being repealed.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the use of accurate and current rules among all TYC facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order a youth's confinement under conditions it believes best designed for the youth's welfare and the interests of the public.

The proposed rule affects the Human Resource Code, §61.034.

§95.7. Reclassification Consequence.

(a) (No change.)

(b) Applicability.

(1) (No change.)

(2) Additional procedures and restrictions are applied prior to any movement of a sentenced offender youth. See (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders). ~~[Also see (GAP) §85.37 of this title (relating to Sentenced Offender Disposition).]~~

(c) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Robinson

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6014



37 TAC §95.9

The Texas Youth Commission (TYC) proposes an amendment to §95.9, concerning Parole Revocation Consequence. The amendment to the section will update a reference due to the repeal of another rule.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the use of accurate and current rules among all TYC facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order a youth's confinement under conditions it believes best designed for the youth's welfare and the interests of the public.

The proposed rule affects the Human Resource Code, §61.034.

§95.9. *Parole Revocation Consequence.*

(a) (No change.)

(b) Applicability.

(1) (No change.)

(2) Additional procedures and restrictions are applied prior to any movement of a sentenced offender youth. See (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders). [(GAP) §85.29 of this title (relating to Program Completion and Movement): Also see (GAP) §85.37 of this title (relating to Sentenced Offender Disposition).]

(c) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Robinson

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6014



37 TAC §95.11

The Texas Youth Commission (TYC) proposes an amendment to §95.11, concerning Disciplinary Transfer/Assigned Minimum Length of Stay/Demotion of Phase Consequence. The amendment to the section will update a reference due to the repeal of another rule. Procedures for sentenced offenders in addition to those established in this rule can now be found in §85.33.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the use of accurate and current rules among all TYC facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order a youth's confinement under conditions it believes best designed for the youth's welfare and the interests of the public.

The proposed rule affects the Human Resource Code, §61.034.

§95.11. *Disciplinary Transfer/Assigned Minimum Length of Stay/Demotion of Phase Consequence.*

(a) (No change.)

(b) Applicability.

(1) (No change.)

(2) Additional procedures and restrictions are applied prior to any movement of a sentenced offender youth. See (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders) [(GAP) §85.37 of this title (relating to Sentenced Offender Disposition)].

(c) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Robinson
Executive Director
Texas Youth Commission
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For further information, please call: (512) 424-6014

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CHAPTER 97. SECURITY AND CONTROL

SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §97.23

The Texas Youth Commission (TYC) proposes an amendment to §97.23, concerning Use of Force. The amendment to the section will establish that physical restraint may be used to protect a youth from imminent self-harm, including the removal of or access to items or clothing which could potentially be used for self-harm. Protective clothing will be issued to such youth.

Don McCullough, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McCullough also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the safety and protection of TYC youth who display overt suicidal behavior. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the

authority to confine a youth under conditions it believes are best designed for the youth's welfare and the interests of the public.

The proposed rule affects the Human Resource Code, §61.034.

§97.23. *Use of Force.*

(a) - (d) (No change.)

(e) Criteria for Use. Force may be used only as a last resort and only as a control measure to ensure the safety and welfare of youth, staff, or the public. The use of force (to restrain or compel movement) shall be limited to instances of:

(1) protection of the youth from imminent self-harm; (Including the removal of or access to items or clothing that could potentially be used for self-harm, the issuance of protective clothing, or the administration of medical treatment in a situation that is life threatening and/or youth is engaging in imminently serious self-injurious behavior);

(2) self-protection of staff from imminent harm;

(3) - (7) (No change.)

(f) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Executive Director
Texas Youth Commission

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